



ALLOWING THE ACCUSED TO PUT THEIR CASE

Author: [Krishna Vijay Singh](#) (Senior Partner), [Madhvi Datta](#) (Partner) and [Nachiketa Goyal](#) (Principal Associate)

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The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), has replaced the Code of Criminal Procedure, 1973 (CrPC), from 1 July 2024. Section 223 of the BNSS has rectified what may be thought by many as a surprising omission in the previous law. It is now mandatory for a magistrate to give the accused an opportunity to be heard before an alleged offence is accepted into the criminal justice system.

The filing of false criminal complaints by former employees, business partners and third party suppliers against companies and their executives as a negotiating tactic in parallel civil disputes is not uncommon in India. Under the CrPC, the accused would have had no knowledge that the process of criminal law had been set in motion until they received a summons from the magistrate to appear and face trial. Even worse, if the accused did become aware of the fact that a criminal complaint has been filed, they had no right to appear and contest the same before the magistrate. They could not, therefore, put their version of the case to the judicial officer who would be deciding whether they should be put on trial. For the same reason, a putative defendant could not apply to a higher court by a revision petition or criminal writ petition. They could do so only after the summons had been issued.

Under the previous system, the hapless innocent party had no alternative but to wait for the summons to be issued and served on them. Only at that point could the decision of the magistrate to accept the case be challenged by applying to a higher court through a revision petition or a criminal writ petition. This would entail expense and time.

The inability of defendants to challenge the magistrate's decision prior to issue of the summons has often been misused by their adversaries. Without there being any counter narrative, a person had merely to file a criminal complaint, give a statement on oath before the magistrate and satisfy the judicial officer that, based on the wholly one-sided presentation of events, the judicial officer should take cognizance of the case and issue the summons.

Setting in motion a criminal law process is a serious matter. It is even more so when defendants are entirely innocent and have been summoned to defend themselves in a criminal trial without the chance of being heard. Magistrates often took cognizance without having applied their minds to the issues or without giving reasons for their decisions. High courts and the Supreme Court have held that magistrates must apply their minds as to whether the allegations in the complaint, when considered with the statements recorded and any inquiry into them, constitute a breach of the law sufficient to

call a person before a criminal court. Despite such strictures, the number of false criminal complaints has continued to rise.

The proviso to section 223 of the BNSS requires that in a criminal complaint, after examining the complainant and the witnesses on oath, but before taking cognizance of an offence, the magistrate must issue a notice to the accused, giving them the opportunity to be heard. Recently, the Karnataka High Court in *Sri Basanagouda R Patil v Sri Shivananda S Patil* held that the procedure under section 223 of the BNSS meant that the opportunity of being heard was not an empty formality. Therefore, the notice that was sent to the accused in the terms set out in the proviso to section 223(1) of the BNSS should have appended to it the complaint and the sworn statements of any witnesses. This would enable the accused to appear and submit their case before the magistrate takes cognizance of the matter. In the considered view of the court that was the clear purport of section 223 of the BNSS.

If, despite hearing the accused in terms of section 223, a magistrate takes cognizance without applying their mind, the aggrieved will still have the other remedies available, as were available under the CrPC, such as applying to quash the magistrate's order by a revision petition or criminal writ petition. The provision allows a balanced assessment of the complaint, enabling the dismissal of a meritless case before it goes further. The proviso to section 223 of the BNSS is clearly a welcome step towards the ease of doing business in India.