



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

S.B. Criminal Writ Petition No. 587/2026

1. Arvind Nath S/o Satyendra Nath Vyas, Aged About 53 Years, R/o Near Police Station Station Road Police Station Gangrar District-Chittorgarh Rajasthan
2. Smt Kanta Pandiya W/o Mukesh Kumar Pandiya, Aged About 48 Years, R/o House No 236 Near Railway Gate Putholi Police Station Gangrar District Chittorgarh Rajasthan

----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Kalu S/o Sohan Lal Suthar, R/o Salera Ps Gangrar Dist Chittorgarh Rajasthan

----Respondents

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For Petitioner(s) : Ms. Komal R. Verma  
For Respondent(s) : Mr. N.S. Chandawat, DyGA

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

**Order**

**Reportable**

**09/02/2026**

1. The legal trajectory of this case starts with FIR No.21/2025 registered at Police Station Gangrar for the offence under Section 296(a) of the BNS, in which the petitioners have been alleged to have committed an offence within the school premises. The investigation in that case is underway. The petitioners thereafter lodged FIR No.175/2025 alleging that accused Kalu Ram Suthar and some other persons have committed certain offences. The investigation in that case is also underway.

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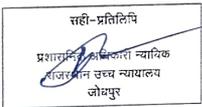
प्रशासनिक अधिकारी न्यायिक  
संज्ञस्थान उच्च न्यायालय  
जोधपुर

10 FEB 2026



2. The same Kalu Ram Suthar, who is accused in FIR No.175/2025 registered at Police Station Gangrar, has further filed a criminal complaint against the petitioners having identical allegations, which has already been the subject matter of FIR No.175/2025 of the same police station. The petitioners, as such, challenged the issuance of summons in Criminal Complaint No.03/2025 issued by the learned Judge, POCSO Court No.1, Chittorgarh, seeking their appearance on 11.02.2026. The petitioners have sought quashing of the criminal complaint in entirety.

3. Before proceeding with the matter, it would be apposite and indeed necessary to advert to the provisions of CrPC and BNSS and to delineate, with some precision, the distinction between the regime of pre-cognizance under the CrPC and the newly engrafted provision under the BNSS, as also to comprehend the true ambit and sweep of the said power. For the ease of reference, Section 200 of CrPC (corresponding to Section 223 of BNSS) are reproduced herein below:-



110 FEB 2026

**200. Examination of complainant.**— 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—

- if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
- 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.

### 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:

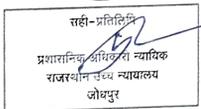
Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

(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 bare perusal of both the provisions, it is evident that under the CrPC, the stage preceding cognizance was largely unilateral in character, wherein the Magistrate was confined to examining the complaint and the complainant alone, the proposed



10 FEB 2026



accused remaining wholly outside the pale of participation. The BNSS, however, marks a conscious legislative departure by clothing the Magistrate, in specified complaint cases involving offences punishable with three years or more, with a discretionary authority to afford a limited hearing to the proposed accused even before cognizance is taken. The object is neither to conduct a roving enquiry nor to adjudicate upon the merits of the allegations, but to enable the Court to apply a more informed judicial mind so as to arrest, at the very threshold, frivolous, vexatious or manifestly abusive prosecutions. The scope of such pre-cognizance hearing remains circumscribed, cautious and enabling, serving as a protective sieve rather than a substitute for trial, thereby striking a delicate balance between the complainant's right to set the criminal law in motion and the proposed accused's right to be shielded from unwarranted criminal process.



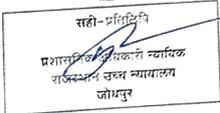
5. It is necessary to place the statutory scheme in its correct doctrinal setting by interpreting Section 200 of CrPC and Section 223 of BNSS, as they stand. Section 200 CrPC, the Magistrate, upon a complaint being presented, was required to examine the complainant and the witnesses present, if any, on oath. The legislative intent was confined to enabling the Court to ascertain whether a prima facie case existed and whether sufficient grounds were made out to proceed further. At this stage, the entire exercise was strictly bilateral between the Court and the complainant. The accused had no locus, no right of appearance, and no opportunity to resist or explain prior to the issuance of

190 FEB 2026



process. The moment the Magistrate applied his judicial mind to the complaint by recording such statements, cognizance was understood to have been taken, and the statutory course thereafter moved towards issuance of process under the law.

5.1 Section 223 of the BNSS, however, introduces a carefully calibrated departure in legislative expression. The provision opens with the words "A Magistrate having jurisdiction **while taking cognizance** of an offence on complaint". The use of the expression "while taking cognizance", as opposed to the earlier formulation "taking cognizance", is neither accidental nor ornamental. It conveys that the act of taking cognizance is no longer an instantaneous or singular event, but a processual stage during which certain statutory requirements may intervene. This nuanced phraseology assumes significance particularly in light of the proviso appended to Section 223 of BNSS, which contemplates affording an opportunity of hearing to the proposed accused in specified complaint cases. The wording suggests that, unlike the earlier regime where cognizance was deemed complete upon initial judicial application of mind, the Magistrate under the BNSS now operates in an interstitial phase, a stage anterior to full cognizance, yet posterior to the filing and registration of the complaint. In this interregnum, the Magistrate is statutorily enabled to issue notice to the proposed accused and hear him, before crystallising the judicial decision to take cognizance. The Magistrate, therefore, is not yet seized of the offence in the strict sense, but is in the course of deciding whether cognizance ought at all to be taken. The provision does not contemplate an



10 FEB 2026

adjudication on merits, nor does it permit a detailed examination of evidence; its scope remains confined to assisting the Court in forming a more informed judicial opinion at the threshold. Thus, the interpretative shift from "taking cognizance" to "while taking cognizance" marks the legislative recognition of a distinct pre-cognizance window, wherein the Magistrate's judicial mind is engaged, yet not conclusively applied. It is precisely at this juncture that the issuance of notice to the proposed accused finds its statutory and conceptual justification, harmonising procedural fairness with judicial restraint, and recalibrating the balance between initiation of criminal process and protection against its unwarranted invocation.

6. In the present case, the petitioners were summoned by the learned Judge, POCSO Court. In the considered view of this Court, the learned trial Judge has proceeded in consonance with the procedure prescribed under the BNSS by issuing summons to the petitioners for the limited purpose of affording them an opportunity of being heard prior to proceeding further. A perusal of the order-sheets of the court below reveals that the statements of the complainant as well as the witnesses have already been recorded. After hearing counsel and going through all the material annexed with the writ petition, this Court feels that the criminal complaint instituted against the writ petitioners should come to an end logically in accordance with law. At the same time, being the sentinel of the Constitution and in the peculiarity of the facts and circumstances of the case, the right to life and liberty of the petitioners ought to be protected.



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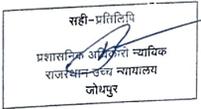
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[2026:RJ-JD:7199]

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[CRLW-587/2026]

7. In view of the aforesaid factual and legal position, the instant writ petition is disposed of with the following directions:-

(i) The petitioners shall appear before the learned Judge, POCSO Court No.1, Chittorgarh, on 11.02.2026.

(ii) It is directed that no coercive measures shall be taken against the petitioners.

(iii) The learned trial Court is expected to afford a hearing to the petitioners and, thereafter, to pass an appropriate order on the question of taking cognizance, strictly in accordance with law.

(iv) Any oral or documentary material, as may be placed on behalf of the petitioners, shall also be duly considered before passing a final order on the aforesaid issue.

8. The writ petition stands disposed of accordingly.

9. With the above observations and directions, the writ petition is disposed of. All pending applications are also disposed of.



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राजस्थान राज्य न्यायालय  
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(FARJAND ALI),J

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