



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

S.B. Criminal Revision Petition No. 47/2026

1. Prashant Kaushik S/o Shri Chandra Dev Sharma, Aged About 52 Years, Resident Of 4/viii, J.n.b. Nagar, Bikaner At Rpresent Deputy Superintendent Of Police, Anupgarh, District Sri Ganganagar Rajasthan.
2. Manohar Singh S/o Shri Bhanwar Singh, Aged About 46 Years, R/o Sameja Kothi Ps Sameja Kothi At Present Assistant Sub Inspector Circle Office Anoopgarh District Sri Ganganagar Raj.
3. Sardar Singh S/o Shri Chothu Ram, Aged About 53 Years, R/o Gokul Ka Baas Ps Khandela District Sikar At Present Sub Inspector Sameja Kothi District Sri Ganganagar Raj.
4. Kishan Singh S/o Late Shri Ishwar Singh, Aged About 40 Years, R/o Village Post Binjasi Via Sighet Badi Tehsil Dhod District Sikar At Present Driver Ps Anoopgarh District Sri Ganganagar Raj.

----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Tek Chand S/o Shri Doonger Ram, R/o Wad No. 33 Anoopgarh District Sri Ganganagar Raj.

----Respondents

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For Petitioner(s) : Mr.Anand Purohit,Sr. Adv.

Assisted by Mr. D.S. Thind

Ms. Sonika

Mr. Mayank Roy

For Respondent(s) : Mr. N.S. Chandawat,Dy.G.A.

Mr.Shrawan Choudhary

Mr. Bhom Singh

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

**Order**

**Reportable-****Date of Conclusion of Arguments : 11/02/2026****Date on which Order is Reserved : 11/02/2026****Full Order or Operative Part : Full Order****Date of Pronouncement : 07/04/2026****By the Court-****Grievance of the Case :**

1. By way of filing the instant revision petition, the petitioners have assailed the legality and propriety of the order dated 21.11.2025 passed by learned Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Sri Ganganagar, in a criminal complaint titled "Tek Chand v. Prashant Kaushik & Ors.", whereby the learned court has directed the Superintendent of Police, Sri Ganganagar, under Section 175(3) of the BNSS, 2023, to register an FIR against the present petitioners. The said impugned order is challenged as being contrary to law, passed without due application of judicial mind, and in excess of jurisdiction, thereby causing serious prejudice to the petitioners.

**Facts of the Case**

2. The facts, in brief, necessary for adjudication of the present revision petition are that the learned Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Sri Ganganagar, vide





order dated 21.11.2025, forwarded a private complaint filed by the respondent-complainant Tek Chand to the Superintendent of Police, Sri Ganganagar, under Section 175(3) of the BNSS, 2023, with a direction to register an FIR against the present petitioners, who are government employees. The said order is alleged to have been passed without following due process of law and without recording reasons, thus being a non-speaking order.

3. Prior to the filing of the said complaint, an FIR bearing No. 500/2025 dated 20.08.2025 was registered at Police Station Anupgarh, District Sri Ganganagar, on the complaint of Sanjay Kumar against Tek Chand (present respondent) and others for offences under Sections 115(2), 126(2), 3(5) of the BNS, 2023, along with Sections 3(1)(r), 3(1)(s) and 3(2) (va) of the SC/ST Act, 1989 (as amended in 2015). Upon completion of investigation, the investigating agency submitted a charge-sheet dated 21.10.2025 against Tek Chand and other accused persons before the competent court. It is further borne out from the record that Tek Chand, in turn, lodged FIR No. 587/2025 dated 25.09.2025 at the same police station against Sanjay Kumar and others for offences under Sections 115(2), 307, 190, 191(2) and 191(3) of the BNS, 2023. However, after a thorough investigation, the Investigating Officer submitted a negative final report dated 25.11.2025, observing that the said FIR appeared to have been lodged with an oblique motive to





exert undue pressure in retaliation to the earlier FIR No.500/2025. Subsequently, the respondent-complainant Tek Chand filed a criminal complaint dated 01.11.2025 before the Special Court under Section 175(3) of the BNSS, 2023, alleging various offences under the BNS and the SC/ST Act against the present petitioners, primarily on the ground of alleged irregularities in the investigation of FIR No. 587/2025 and inaction on a prior complaint submitted to the Director General of Police (Vigilance), Jaipur. Acting upon the said complaint, the learned Special Judge, without complying with the mandatory requirements of Section 175(4) of the BNSS, passed the impugned order dated 21.11.2025 directing registration of an FIR. Aggrieved thereby, the petitioners have preferred the present revision petition.

4. Heard learned counsels present for the parties and gone through the materials available on record.
5. Upon hearing learned counsel for the parties and upon a careful perusal of the material available on record, this Court proceeds to examine the legality, propriety and sustainability of the impugned order dated 21.11.2025 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Sri Ganganagar.
6. At the outset, it is apposite to note that the impugned order has been passed on a private complaint filed by the respondent-complainant invoking Section 175(3) of the





BNSS, 2023, whereby a direction has been issued to the Superintendent of Police for registration of an FIR against the present petitioners, who undisputedly are public servants.

7. Upon a holistic and contextual appreciation of the complaint, this Court finds that the predominant allegations levelled against the petitioners substantially emanate from and are intrinsically connected with the discharge of their official duties, particularly in relation to the investigation of FIR No. 587/2025 and the consequential procedural actions undertaken therein. Although, in addition to such allegations, the complainant has also averred instances of abuse, use of force, and assault, it cannot be overlooked that such allegations, in the given factual matrix, do not exist in isolation but arise in the backdrop of pre-existing criminal litigation and cross-FIRs between the parties. The respondent-complainant himself stands arraigned as an accused in FIR No. 500/2025, and his own FIR No. 587/2025 has already culminated in a negative final report with observations indicative of a retaliatory intent. In such circumstances, allegations of abuse, assault, or use of force against police officials, particularly when made in the course of or in proximity to investigative proceedings, become highly disputed questions of fact, which are susceptible to being easily alleged and cannot be mechanically accepted at face value without preliminary judicial scrutiny. Even otherwise, the determination as to whether such alleged acts





fall within or outside the ambit of official duty is itself a nuanced and debatable issue, dependent upon evidence and surrounding circumstances. Therefore, in view of the intertwined nature of allegations and the surrounding factual complexities, it becomes imperative to adopt a cautious and balanced approach, ensuring that while the grievance of the complainant is not prematurely discarded, adequate protection is also afforded to public servants against vexatious or retaliatory prosecution. In such a scenario, the safer and legally sound course would be to afford an opportunity of hearing to the concerned public servants and to examine the matter in light of the statutory safeguards, rather than proceeding in a mechanical manner.

8. It is precisely in such complex and overlapping factual scenarios that the legislative intent underlying Section 223 of the BNSS assumes critical significance. For the ease of reference, Section 223 of BNSS is reproduced herein below:-

### **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.

9. The said provision marks a conscious and substantive departure from the earlier regime by introducing a safeguard at the pre-cognizance stage. The scheme of Section 223 BNSS clearly envisages that the process of taking cognizance is no longer an instantaneous act but a calibrated judicial exercise, wherein the Magistrate is required to apply his mind in a structured and informed manner. The use of the expression “while taking cognizance” signifies the existence of an intermediate stage, during which the Court is empowered and in certain cases obligated to afford an opportunity of hearing to the proposed accused.

10. More importantly, sub-section (2) of Section 223 specifically mandates that where the complaint is directed against a





public servant for acts purportedly committed in discharge of official duties, the Magistrate shall not proceed to take cognizance unless two essential conditions are satisfied:

- firstly, the public servant must be afforded an opportunity to explain the circumstances leading to the alleged incident; and
- secondly, a report containing the factual matrix must be obtained from the superior officer.

11. This statutory requirement is not an empty formality but a substantive safeguard intended to protect public servants from frivolous, retaliatory, or vexatious prosecutions arising out of their official functions.

12. The object of incorporating such a provision is to strike a delicate balance between the right of a complainant to seek redressal and the necessity to shield public servants from undue harassment for bona fide acts performed in discharge of duty. The provision acts as a judicial filter, a protective sieve, to ensure that criminal law is not set into motion mechanically or as a tool of vendetta, particularly in cases where allegations stem from official actions. It ensures that before the coercive machinery of criminal law is activated, the Magistrate is equipped with a more complete and balanced perspective, having considered the version of the proposed accused and the administrative context in which the alleged acts occurred.





13. In the present case, this Court finds that the learned Special Judge has, while exercising powers under Section 175(3) of the BNSS, failed to advert to or comply with the mandatory requirements engrafted under Section 223 of the BNSS. It is no doubt true, as a settled position of law, that when a Magistrate directs registration of an FIR and investigation under Section 175(3), he does not, strictly speaking, take cognizance of the offence at that stage. However, such a proposition cannot be construed to mean that the power under Section 175(3) is to be exercised in a casual, mechanical, or routine manner. The very act of examining a complaint, appreciating its averments, and forming an opinion as to whether the matter warrants invocation of police machinery or requires further judicial scrutiny necessarily postulates application of judicial mind. Once the Magistrate embarks upon such evaluative exercise and reaches a stage where he considers whether an inquiry ought to be undertaken on the complaint, it reflects an incipient application of mind akin to the stage "while taking cognizance" as contemplated under Section 223 of the BNSS. The expression "while taking cognizance" employed in Section 223 is of wide amplitude and signifies not merely the final act of cognizance, but also the preparatory stage where the Magistrate is required to judiciously assess the complaint before proceeding further. Therefore, even if in the strict technical sense cognizance is not said to have been taken,





the statutory safeguards embedded under Section 223, particularly in cases involving public servants, cannot be rendered otiose by resorting to Section 175(3) in a routine manner. The Magistrate, in such circumstances, was under a legal obligation to examine the nature of allegations with greater circumspection and to consider whether the complaint necessitated adherence to the protective framework envisaged under Section 223(2), including affording an opportunity of hearing to the concerned public servants before setting the criminal law into motion.

14. Furthermore, the impugned order does not reflect any application of judicial mind to the peculiar facts and circumstances of the case, particularly the existence of prior FIRs, the negative final report, and the apparent retaliatory nature of the complaint. The order, being non-speaking and mechanical, fails to demonstrate the satisfaction required for invoking powers under Section 175(3) of the BNSS. It is evident that the learned Magistrate has proceeded with a closed or uncritical approach, without meaningfully engaging with the contents of the complaint. A bare perusal of the complaint would have revealed that the allegations are directed against public servants in relation to acts purportedly performed in discharge of their official duties, thereby attracting the rigours of Section 223(2) of the BNSS. In such a situation, the Magistrate ought to have, before directing registration of an FIR, at least considered whether





it was necessary to call for a response from the concerned public servants and to obtain a report from their superior officer, as statutorily mandated. The failure to undertake such an exercise indicates that the power under Section 175(3) has been invoked in a perfunctory manner, without due regard to the legislative safeguards designed to prevent misuse of criminal process against public officials. The law does not countenance a blind or mechanical forwarding of complaints for registration of FIR; rather, it obligates the Magistrate to read, analyse, and scrutinize the complaint with care, and upon such scrutiny, to form an informed opinion as to whether the case falls within the domain of Section 175(3) or calls for recourse to the procedure under Section 223. In the present case, such essential judicial exercise having been conspicuously absent, the impugned order stands vitiated for non-application of mind and for failure to adhere to the statutory mandate.

15. In view of the above, this Court is of the considered opinion that the direction issued for registration of FIR against the petitioners, without adhering to the statutory safeguards and without proper judicial consideration, cannot be sustained in the eyes of law. At the same time, this Court deems it appropriate not to foreclose the remedy of the complainant, but to ensure that the matter is examined afresh in accordance with the procedure established by law.





16. Accordingly, the impugned order dated 21.11.2025 is hereby set aside. All consequential proceedings undertaken pursuant thereto are also quashed.

17. In consequence of the foregoing analysis and the legal infirmities noticed in the impugned order, the matter is deemed fit to be remanded back to the learned court below for fresh adjudication. The remand is necessitated to ensure that the complaint is examined in its proper legal perspective, in conformity with the statutory framework governing the field. The learned court below is, therefore, directed to reconsider the complaint de novo, by undertaking a comprehensive and independent evaluation of the allegations, the material available on record, and the surrounding factual matrix, strictly in accordance with law.

18. Having regard to the peculiar facts of the present case, it is evident that the allegations levelled in the complaint are predominantly rooted in and arise out of the earlier FIRs between the parties, particularly concerning the manner of investigation, alleged procedural irregularities, deliberate distortion of facts, and purported misuse or mishandling of authority by the concerned police officials. Such allegations are not independent or isolated in nature, but are inextricably interwoven with the earlier investigative process and the attendant circumstances. In such a situation, it would be neither prudent nor legally sustainable to proceed





in a mechanical manner; rather, the appropriate course would be to first undertake a preliminary inquiry so as to ascertain the veracity, context, and substance of the allegations made.

19. During the course of such inquiry, it shall be incumbent upon the learned Magistrate to strictly adhere to the statutory mandate embodied under Section 223 of the BNSS, 2023. In particular, since the allegations are directed against public servants in respect of acts purportedly done in discharge of their official duties, an effective and meaningful opportunity of hearing must necessarily be afforded to them at this stage itself, and such opportunity shall not be treated as a mere formality but as a substantive safeguard. The learned Magistrate shall also ensure that any report from the competent superior authority, as contemplated under law, is duly called for and considered in its proper perspective.

20. Only upon completion of such inquiry, and after duly considering the explanation of the concerned public servants along with the material available on record, including any report obtained in terms of Section 223, shall the learned Magistrate proceed to take a reasoned decision. The entire exercise shall culminate in a well-reasoned and speaking order, reflecting due application of judicial mind to all relevant aspects, including the background of prior FIRs, the nature of allegations, the outcome of earlier investigations,





and the explanations furnished by the concerned officials. Depending upon the outcome of such inquiry and evaluation, the learned court shall then be at liberty either to dismiss the complaint in accordance with law or to proceed further by taking cognizance and issuing process, as the case may warrant.

21. The revision petition stands disposed of in the above terms.

22. All pending applications are also disposed of.

**(FARJAND ALI),J**

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