



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No. _____ of 2026
(@Special Leave Petition (Crl.) No.14343 of 2026)

Umar and Anr.

.... Appellants

Versus

The State of Uttar Pradesh & Anr.

.... Respondent

ORDER

Leave granted.

2. In the above appeal, our attention is to be bestowed on the short question as to whether ‘cognizance’ has been taken in the protest petition filed under Section 200 of the Code of Criminal Procedure, 1973 (Cr.PC) before or after the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) came into force w.e.f. 01.07.2024.

3. We need not dwell upon the facts leading to the complaint. Suffice it to notice that an FIR was registered on 07.06.2022, pursuant to which the police filed a Closure Report after investigation on 06.08.2022. On 14.10.2022, a protest petition was filed in which further investigation was ordered under Section 173(8) of the Cr.PC on 29.11.2022.

After further investigation, a Closure Report was again filed on 14.02.2023, against which also a protest petition was filed on 28.04.2023. The complaint was taken on board on 11.10.2023 and the same was posted for statement of the complainant, which was taken along with that of the other witnesses produced, on 06.03.2024. The matter remained in limbo till 03.06.2026 when the learned Special Judge, (SC/ST), Azamgarh, by a detailed order *prima facie* found commission of the offence and issued process against the respondents.

4. Mr. Shoeb Alam, learned Senior Counsel appearing for the appellant-accused would point out that Annexure P26 dated 03.06.2026 was the order by which cognizance was taken; when the BNSS had come into force. Necessarily cognizance could have been taken only after giving the accused an opportunity of being heard as is statutorily mandated in the proviso to Section 223 of the BNSS, a departure from the *pari materia* provision in Cr.PC. The learned Senior Counsel relies on a decision of this Court in ***Parvinder Singh v. Directorate of Enforcement*¹**, to urge two

¹ 2026 SCC OnLine SC 903

propositions; one, that after the BNSS came into effect, even if the crime is registered or committed prior to that, the procedure under the BNSS has to be followed, and then, that before taking cognizance under the BNSS, the accused has to be necessarily heard.

5. Ms. Srishti Singh, learned Advocate on Record appearing for the respondent-State refutes the contention of the appellant, specifically pointing out that cognizance has been taken earlier to the BNSS.

6. Mr. Sayed Waseem Quadri, learned Senior Counsel appearing for the respondent-complainant, would rely on two decisions of this Court to buttress his contention that there is no formal order required, to find cognizance having been taken and cognizance cannot be confused with the issuance of process. According to him, cognizance had been taken, the minute the complaint was accepted to the files of the Court. He relies on the decisions in ***CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.***² and ***Zunaid v. State of Uttar Pradesh & Ors.***³.

² (2005) 7 SCC 46

³ (2023) 14 SCC 576

7. **CREF Finance Ltd.**² was a case in which the record of the Magistrate clearly indicated the words 'cognizance taken' on 01.06.2000. This Court found that even if the same was not recorded that would make no difference since cognizance taken, is of the offence and not of the offender and therefore issuance of process to the offender cannot be confused with cognizance. It was held that once the Court on perusal of the complaint is satisfied that it discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. (*sic* para 10).

8. In paragraph 9 of the said judgment, this Court referred to a number of decisions to hold that, cognizance is used in the Cr.PC to indicate the point when the Magistrate or Judge takes judicial notice of the offence and that it was a word of indefinite import, depending upon the statutory requirement.

9. **Zunaid**³ also held that when a police report is received under Section 173, Cr.PC, whether it be a Closure Report or a chargesheet, the Magistrate has three options; (1) to drop

action, then (2) take cognizance and issue process without being bound by the conclusion arrived at by the police and lastly, (3) take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200.

10. In this context we also have to notice ***Parvinder Singh¹*** which held that under the BNSS taking cognizance is nothing but an application of judicial mind and till such judicial mind is exercised, an inquiry cannot be deemed to have commenced. This is the position even under the Cr.PC, but under the BNSS there is a requirement added to hear the accused before exercising the judicial mind.

11. Essentially, it will depend upon the manner in which the Court has proceeded with a report filed by the police, or a protest complaint, for which we have to look at the various proceedings in the present case. Annexure P23 is the order passed on the protest petition, wherein a detailed consideration was made and after laying down the options available on the submission of a Closure Report, the Court found justified an inquiry to be conducted by the Court itself

and directed the complainant to be produced for evidence under Section 200 Cr.PC. Hence, the Court did not take cognizance at that stage and required the evidence of the complainant which was taken on 06.03.2024. The complainant was examined as PW1, her husband as PW2 and a Doctor as PW3. No orders were passed and the matter was kept pending for almost two years. On 03.06.2026, Annexure P26 order was issued, wherein it was categorically found that *prima facie* the accused has committed the offences as alleged and hence process is issued to the accused.

12. From a reading of the first order passed, taking on record the complaint and requiring the complainant's presence for taking evidence, as also the second order passed finding *prima facie* case made out on which process was issued, we are of the opinion that it is the second order passed on 03.06.2026 that the judicial mind was applied, as *prima facie* case was found, deeming the cognizance having been taken. That being so, the Court had to summon the accused and hear him before such cognizance was taken.

13. In the above circumstances, we set aside Annexure P26 order to the extent '*prima facie* case was found, and cognizance was taken' and confine it to a 'summons simplicitor'. The appellant accused shall appear before the Court within a period of one month and on that day, or on any other day if the complainant or her counsel is not present, the matter shall be heard and appropriate orders passed.

14. The appeal stands allowed without any observations on the merits of the matter.

15. Pending application(s), if any, shall stand rejected.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
SEPTEMBER 23, 2026.**