

TCFSL vs _____

Present Counsel for the complainant

Fresh complaint is presented. It be registered. As per proviso to section 233(1) of BNSS, 2023 no cognizance of an offence shall be taken by the Magistrate without giving accused an opportunity of being heard. The Hon'ble Supreme Court of India in Jamuna Singh and others Versus Bhadai Shah AIR 1964 SC 1541 held that the moment court record the statement of complainant in a complaint cases, it amounts to taking cognizance. This view is reiterated in Cref Finance Ltd. Versus Shree Shanthi Homes Pvt. Ltd. & anr. 2005 SCC (Crl.) 1697 and in State of Karnataka & Anr. Versus Pastor P. Raju (2006) 6 SCC 728. Therefore, at this stage statement of complainant or his witnesses cannot be recorded. **Let pre-cognizance notice, affording opportunity of being heard, to respondent/accused be issued under proviso to section 223(1) of BNSS, 2023 for 22.01.2025 through RC/AD. Dasti notice be given to complainant, if requested.**

It is however, made clear that this notice under proviso to 223 (1) BNSS 2023 is not be treated as summons and respondent/accused is entitled to appear either in person or through counsel. In case respondent/accused fails to appear after service of notice, taking of cognizance of offence under section 138 of NI Act shall be considered in absentia.

Date of Order: 27.11.2024
Parveen Kumar, Steno III

(Ms. Riffi Bhatti)
Judicial Magistrate Ist Class
UID NO . PB00563