



## **BNSS Vs. NI Act: Understanding Special Law's Unyielding Stance in Cheque Bounce Cases**



### **Introduction**

The intricate interplay between special statutes and the broader framework of criminal procedure has recently been illuminated by a significant pronouncement from the Karnataka High Court in *Ashok S/O Siddappa Bankar vs Fayaz Aahmad S/O Aurangzeb Naikar*<sup>1</sup>. This landmark decision, specifically addressing cheque bounce cases under the NI Act<sup>2</sup> and the application of the newly enacted Section 223(1) of the BNSS<sup>3</sup>, offers a crucial perspective on procedural safeguards and legislative intent. It delves into the very essence of how our legal system balances the need for expeditious justice with the fundamental rights of the accused.

The genesis of this judicial deliberation arose from a challenge brought forth by a petitioner. A cheque bounce case had been lodged against him before a local court, and his primary contention was that the trial judge, in taking cognizance of the complaint under Section 138 of the NI Act, had failed to extend him the crucial opportunity of being heard – a procedure now enshrined in Section 223(1) of the BNSS. The petitioner sought to have the entire complaint quashed, arguing that this procedural oversight amounted to a fatal infirmity. It



It was this assertion that led **Justice Shivashankar Amarannavar** of the Karnataka High Court, Dharwad Bench, to meticulously examine the legislative landscape.

### The Crux of the Legal Provisions

At the heart of the matter lay a careful consideration of the relevant legal provisions. Central to the discussion was **Section 138 of the Negotiable Instruments Act, 1881**, which criminalizes the dishonour of cheques for insufficiency of funds, and its procedural counterpart, **Section 142 of the NI Act**, which outlines the method for taking cognizance of such offenses, notably requiring a written complaint by the payee or holder in due course. Further augmenting the NI Act's procedural distinctiveness are **Section 143 of the NI Act**, which empowers summary trials for such offenses, and **Section 145 of the NI Act**, allowing for evidence to be presented via affidavit, thereby streamlining the process.

Arrayed against these specific provisions of the NI Act was the freshly minted **Section 223(1) of the Bharatiya Nagarik Suraksha Sanhita**. This pivotal section, a successor to the erstwhile Section 200 of the Criminal Procedure Code (CrPC), introduces a significant proviso: a Magistrate cannot take cognizance of an offense on a complaint without first affording the accused an opportunity of being heard. Complementing this, **Section 5 of the BNSS** acts as a guiding principle, asserting that the general provisions of the Sanhita shall not, in the absence of a specific contrary provision, override any special or local law. Other sections of the BNSS, such as **Sections 225, 226, and 227**, further delineate the Magistrate's powers concerning inquiry into the complaint, dismissal of complaints if there's no sufficient ground for proceeding, and issuance of process (summons or warrant) to the accused, respectively.

### A New Dawn in Criminal Procedure: BNSS vs. CrPC

The transition from the Criminal Procedure Code to the Bharatiya Nagarik Suraksha Sanhita marks a profound shift in the foundational tenets of criminal procedure, particularly concerning the critical stage of taking cognizance in complaint cases. Traditionally, under **Section 200 of the CrPC**<sup>4</sup>, a Magistrate would first examine the complainant and witnesses on oath, and only if a prima facie case was discerned, would the process be issued to the accused. The accused, at this preliminary stage, remained a silent observer, uninvolved in the court's initial assessment.

However, the first proviso to **Section 223(1) of the BNSS** ushers in a new era. Its clear mandate—that “no cognizance of an offence shall be taken by the Magistrate without giving



the accused an opportunity of being heard”—interposes an entirely new step: a pre-cognizance hearing for the proposed accused. This seemingly subtle yet profoundly impactful change aims to fortify the accused’s rights, potentially curtailing the progression of unfounded criminal cases and mitigating instances of wrongful implication. The very phrasing “while taking cognizance” in the BNSS, as opposed to the CrPC’s simpler “taking cognizance,” suggests an ongoing process of judicial application of mind, where the accused’s perspective is now a vital consideration before formal judicial notice is applied to the alleged offense.

### **The Crucial Question: Does the BNSS’s new safeguard apply to NI Act cases?**

This was the central question that the Karnataka High Court was tasked with answering.

In the case at hand, the Karnataka High Court firmly concluded that the procedural requirement of a pre-cognizance hearing, as introduced by Section 223 BNSS, finds no application in complaints filed under Section 138 of the Negotiable Instruments Act. The court’s rationale was deeply rooted in the well-established legal principle that special laws take precedence over general laws. It underscored the fact that the NI Act, being a “Special Law” within the ambit of Section 5 of the BNSS, possesses its own distinct and self-contained procedural framework for handling cheque dishonour cases.

The court pointed to the “non-obstante” clause in **Section 142 of the NI Act**, which explicitly states that its provisions operate “Notwithstanding anything contained in the Code of Criminal Procedure.” This linguistic demarcation, the court reasoned, clearly signifies the NI Act’s intent to prescribe its own pathway for cognizance, independent of the general criminal procedure code. Furthermore, the court reiterated the quasi-criminal nature of Section 138 proceedings, emphasizing that their primary objective is to safeguard the victim’s financial interests, a characteristic that differentiates them from offenses under the Indian Penal Code. The court also highlighted other specific provisions within the NI Act, such as **Section 143**, which allows for summary trials, and **Section 145**, permitting evidence by affidavit, all of which underscore the Act’s tailored and expedited procedural design.

In arriving at its conclusion, the court drew persuasive support from the Madras High Court’s ruling in **Ultimate Computer Care and Another v. S.M.K. Systems**<sup>5</sup>, which had similarly affirmed that the NI Act’s specialized nature exempts it from the pre-cognizance hearing stipulation of the BNSS.

### **Evolving Interpretations and Lingering Questions**





While the Karnataka High Court's pronouncement provides definitive clarity for NI Act cases, the broader application of Section 223 BNSS continues to be shaped by evolving judicial interpretations across the country. Other High Courts have weighed in, offering crucial insights into the sequence of events. The Karnataka High Court itself, in **Sri Basanagouda R. Patil v. Sri Shivananda S. Patil**<sup>6</sup>, has articulated that the notice to the proposed accused under Section 223 BNSS should be issued after the complainant and witnesses have duly recorded their statements on oath.

Despite these emerging clarifications, the precise contours of the accused's involvement at the pre-cognizance stage remain a subject of ongoing discussion and legal scrutiny. Questions regarding the extent to which an accused can present evidence, challenge the complainant's assertions, or the administrative burden and potential for delay introduced by this new procedure, are still being debated and await definitive pronouncements from higher courts, including the Supreme Court, where a challenge to Section 223 BNSS has been filed by the Mannargudi Bar Association.

## Conclusion

The Karnataka High Court's decision provides crucial clarity on the interaction between specialized statutes and the new Bharatiya Nagarik Suraksha Sanhita (BNSS). Specifically addressing cheque bounce cases under **Section 138 of the Negotiable Instruments (NI) Act, 1881**, the court firmly concluded that the newly introduced pre-cognizance hearing under **Section 223(1) of the BNSS** does not apply. This ruling underscores the well-established legal principle that **special laws take precedence over general laws**, particularly when the special law, like the NI Act, possesses its own distinct and self-contained procedural framework, exemplified by the "non-obstante" clause in **Section 142 of the NI Act**. The court's rationale reinforces the expedited and quasi-criminal nature of NI Act proceedings, which are designed to safeguard financial interests.

This judgment carries significant future implications for the Indian legal landscape. It not only streamlines the processing of a vast number of cheque dishonour cases, preventing potential delays from the new pre-cognizance hearing, but also sets a strong precedent for how other specialized statutes might interact with the BNSS. While this decision brings clarity for NI Act cases, the broader application of Section 223 BNSS in other complaint scenarios will likely continue to be a subject of judicial interpretation and debate. The ruling will undoubtedly inform the ongoing discussions, including the challenge to Section 223 BNSS currently before the Supreme Court, ultimately shaping the practical implementation of India's new criminal procedural code.





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#### Citations

1. *Ashok S/O Siddappa Bankar vs Fayaz Aahmad S/O Aurangzeb Naikar*.2025:KHC-D:6966
2. *Negotiable Instruments Act, 1881*
3. *Bharatiya Nagarik Suraksha Sanhita, 2023*
4. [\*Code Of Criminal Procedure, 1973\*](#)
5. *Ultimate Computer Care and Another v. S.M.K. Systems*Criminal OP(MD) No.19778/2022
6. *Basanagouda R. Patil v. Sri Shivananda S. Patil*Criminal OP(MD) No.19778/2022

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