

State Disaster Management Authority Haryana v. Shri Arvind Kejriwal

Present : Complainant namely Mr. Ashish Kaushik, Executive Engineer (XEN), Rai Water Services Division, Sonapat, Haryana in person with Sh. Bhuvesh Malik, Id. APP for the State.

Complaint under Section 223 of Bharatiya Nagarik Suraksha Sanhita, 2023 against the accused for the offences under Section 54 of the Disaster Management Act, 2005 and Section 353 and 356 of Bharatiya Nagarik Suraksha Sanhita (BNS), 2023 presented today. It be checked and registered.

Before proceeding further, it is necessary to quote Section 223 of Bharatiya Nagarik Suraksha Sanhita, 2023:

“Section 223 of Bharatiya Nagarik Suraksha Sanhita is reproduced as under:-

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.*

In view of provision laid down under Section 223 of Bharatiya Nagarik Suraksha Sanhita, 2023, it comes out that *an opportunity of being heard is to be given to the accused before taking cognizance of an offence by the Magistrate.*

So in view of aforesaid provision, let, notice to respondent Arvind Kejriwal son of Sh. Gobind Ram Kejriwal, resident of 5, Ferozeshah Road, New Delhi be issued for 17.02.2025. He is directed to appear in person before this court on the next date of hearing, if he has to say anything in the matter. If he does not appear before this court on next date of hearing, it is deemed that he has nothing to say in the matter and further proceedings shall be conducted in accordance with law.

Announced :29.01.2025
Sonal

(Neha Goyal)
CJM, Sonapat
UID No.HR0359