2026 INSC 519

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. …… of 2026
(Arising out of SLP (Crl.) No. 12055 of 2025)

PARVINDER SINGH … APPELLANT

VERSUS

DIRECTORATE OF ENFORCEMENT … RESPONDENT

J U D G M E N T

M. M. Sundresh, J.

1. Leave granted.

2. The present appeal has been preferred against the judgment dated 19.05.2025 passed by the High Court of Uttarakhand wherein, an issue with respect to the scope and applicability of the first proviso to Section 223(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the "**BNSS**") had arisen, while dealing with a case where the prosecution complaint under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the "**PMLA**") had been filed prior to the date of commencement of the BNSS.

BRIEF FACTS:

3. An ECIR was registered by the respondent against the appellant being ECIR/DNSZO/04/2023 on 24.07.2023, pursuant to which he was arrested on 27.04.2024. Within two months from the date of the arrest, a prosecution complaint was duly filed by the respondent on 24.06.2024, invoking Sections 44 and 45 of the PMLA for the offences under Section 3 read with Section 4 of the PMLA before the designated Special Court. On the very same day, the Special Court issued a direction to register the complaint so filed as a miscellaneous case and, thus, fixed it for hearing on cognizance on 28.06.2024.

4. When the case came up for hearing on the said date, it was once again fixed for hearing on cognizance on 02.07.2024 since the Presiding Officer was on recess. On behalf of the respondent, the learned Special Public Prosecutor had appeared, and the appellant was produced from judicial custody through video conferencing. Within a few days thereafter, the erstwhile Code of Criminal Procedure, 1973, (hereinafter referred to as the "**CrPC**") was replaced by the BNSS with effect from 01.07.2024. When the case came up for hearing on 02.07.2024, the Special Court took cognizance of the offence in the presence of the learned Special Public Prosecutor and the legal advisor who had

appeared on behalf of the respondent, and the appellant who was once again produced in judicial custody from the district jail. The miscellaneous case registered earlier was re-registered as Special Sessions Trial No. 28 of 2024.

5. The following is the conclusion arrived at by the Special Court upon taking cognizance:

> "6….From the perusal of the complaint, it is clear that in the present case, sufficient material is available to take cognizance of Section 3 read with Section 4 of the Prevention of Money Laundering Act against the accused Parvinder Singh. Accordingly, cognizance is taken of Section 3 read with Section 4 of the Prevention of Money Laundering Act against the accused Parvinder Singh."

6. An application for recall of the order dated 02.07.2024 was filed before the learned Special Court on 24.12.2024, *inter alia*, alleging that the mandate of Section 223 of the BNSS, with specific reference to the first proviso to sub-section (1) had not been complied with, as the appellant was not given an opportunity of hearing before the Special Court while taking cognizance. The said application was dismissed by the Special Court, *vide* order dated 22.03.2025, holding that the filing of the application was merely a dilatory tactic employed by the appellant and that once cognizance had been taken, the same Court cannot reconsider it. Further, the Special Court, *vide* the said order, also framed the charges against the appellant under Section 3 read with Section 4 of the

PMLA and put up the case for recording of prosecution evidence on 05.04.2025.

7. Aggrieved, the appellant preferred a criminal revision before the High Court in CRLR No. 183/2025 challenging the order dated 22.03.2025, dismissing the recall application. Yet another criminal revision in CRLR No. 218/2025 was filed challenging the cognizance order dated 02.07.2024.

8. The High Court, *vide* the impugned judgment dated 19.05.2025, has been pleased to hold that the provisions of Section 223 of the BNSS will not have any application to the instant case as the proceedings under the PMLA were initiated against the appellant much prior to the commencement of the BNSS. Accordingly, the criminal revision filed in CRLR No. 218/2025 has been dismissed by placing reliance upon Section 531(2)(a) of the BNSS, which saves criminal proceedings initiated prior to the commencement of the BNSS to continue under the provisions of the erstwhile CrPC. On the same day, the criminal revision filed in CRLR No. 183/2025 was partly allowed by the High Court by quashing the order dated 22.03.2025 to the extent of the charges framed and remanded the matter to the Special Court for fresh hearing on the issue of framing of charges.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

9. The learned Senior Counsel appearing for the appellant submitted that the appellant has, admittedly, not been heard by the Special Court at the time of taking cognizance. It was further submitted that Sections 200 to 205 of the CrPC, which have been reiterated under Sections 223 to 228 of the BNSS, are applicable to the case at hand. Thus, there is no inconsistency between the said provisions of the BNSS and that of the PMLA and, hence, the appellant is entitled to be heard at the time of taking cognizance, as provided under the first proviso to Section 223(1) of the BNSS. A similar view has already been taken by this Court in the case of **Kushal Kumar Agarwal v. Directorate of Enforcement, 2025 SCC OnLine SC 1221**, by placing reliance upon two earlier decisions of this Court in the cases of **Yash Tuteja & Ors. v. Union of India, (2024) 8 SCC 465**, and **Tarsem Lal v. ED, (2024) 7 SCC 61**.

10. Furthermore, the mere fact that the Special Court had directed the prosecution complaint filed by the respondent to be numbered and, thereafter, put up the case for taking cognizance, would not amount to an "inquiry" as defined under Section 2(1)(k) of the BNSS and, therefore, Section 531(2)(a) of the BNSS has no application to the instant case.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

11. Mr. S.V. Raju, the learned Additional Solicitor General (ASG) appearing for the respondent, submitted that the PMLA is a stand-alone enactment and, therefore, the provisions of the BNSS do not have any application to the proceedings under PMLA. There is no question of committal involved in the procedure envisaged under the PMLA and, therefore, the Special Court, being a court of original jurisdiction having a distinct object behind it, cannot be made to follow the general criminal procedure contemplated under the BNSS. In any case, Chapters XIV to XVII of the BNSS do not have any application to the proceedings under the PMLA. In light of the aforesaid submission, the learned ASG further contended that the decision rendered by this Court in **Kushal Kumar Agarwal *(supra)*,** as relied upon by the learned Senior Counsel appearing for the appellant, has to be reconsidered.

12. Without prejudice to his earlier contentions, it is submitted that there is no dispute that the complaint under the PMLA was filed prior to the commencement of the BNSS, and the learned Special Court had, in fact, passed orders prior to the commencement of the BNSS. Thus, the High Court has rightly taken note of Section 531(2)(a) of the BNSS as an inquiry had indeed been initiated by the Special Court prior to the

commencement of the BNSS. He also submitted that, in view of the law as laid down by this Court in **Hardeep Singh vs. State of Punjab**, **(2014) 3 SCC 92**, it has to be held that an inquiry had already commenced prior to the commencement of the BNSS and, hence, the provisions of the CrPC shall be applicable.

13. In any case, the appellant has not shown any prejudice caused to him due to the Special Court having taken cognizance without hearing him. Hence, the impugned order ought not to be interfered with, and the appeal deserves to be dismissed.

14. Before we go into the issues raised by the learned Senior Counsel and the learned ASG, we shall now have a look at the relevant provisions.

DISCUSSION ON RELEVANT LEGAL PROVISIONS

(i) THE PREVENTION OF MONEY LAUNDERING ACT, 2002

Section 43 of the PMLA

> **"43. Special Courts.—**(1) **The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate, one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.**
>
> *Explanation*.—In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.
>
> (2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which

the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial."

(emphasis supplied)

15. Section 43 of the PMLA defines a Special Court as a Court of Session which has been designated by way of a notification issued by the Central Government in consultation with the Chief Justice of the respective High Court. Any Trial Court other than a Court of Session cannot function as a Special Court.

Section 44 of the PMLA

"44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(*a*) an offence punishable under Section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or

(*b*) **a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under Section 3, without the accused being committed to it for trial:**

Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or

(*c*) **if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (*b*), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the**

scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(*d*) **a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.**

Explanation.—For the removal of doubts, it is clarified that,—

(*i*) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(*ii*) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under Section 43."

(emphasis supplied)

16. Section 44(1)(b) of the PMLA empowers the authority to file a complaint before the Special Court without the accused being committed to it for trial. Under the proviso to Section 44(1)(b) of the PMLA, it is well open to the authority to submit a closure report before the Special Court if no offence of money laundering is made out upon conclusion of investigation. As per Section 44(1)(c) of the PMLA, it is open to the

authority who filed the complaint to seek committal of a case relating to a Scheduled Offence, which is pending before a competent Court, to the Special Court by way of an application. If and when such an application is filed, the Court dealing with the Scheduled Offence has to commit the same to the Special Court, which shall thereafter proceed to deal with it from the stage at which it was committed. Section 44(1)(d) of the PMLA makes the procedure under the CrPC, which has now been replaced by the procedure under the BNSS pursuant to the repeal, applicable to a trial before the Special Court as if it were a Court of Session.

Section 46 of the PMLA

> **"46. Application of Code of Criminal Procedure, 1973 to proceedings before Special Court.—**(1) **Save as otherwise provided in the Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor**:
>
> Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.
>
> (2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.
>
> (3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (*u*) of Section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall have effect accordingly."

(emphasis supplied)

17. Section 46 of the PMLA treats the Special Court to be deemed to be a Court of Session, wherein, the provisions of the CrPC (now BNSS) shall apply to the proceedings under the PMLA, save as otherwise provided under the PMLA. In other words, the procedural framework governing the proceedings before a Court of Session stands extended to the Special Court under the PMLA.

Section 65 of the PMLA

> **"65. Code of Criminal Procedure, 1973 to apply.— The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act."**
>
> (emphasis supplied)

18. Section 65 of the PMLA makes the provisions of the CrPC (now BNSS) applicable to proceedings under the PMLA, provided that they are not inconsistent with the provisions of the PMLA. It acknowledges the overriding effect of the PMLA while also facilitating the application of the other provisions contained in the CrPC (now BNSS).

Section 71 of the PMLA

> **"71. Act to have overriding effect.— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."**
>
> "(emphasis supplied)

19. Section 71 of the PMLA places the provisions of the PMLA on a higher pedestal *vis-à-vis* any other law operating in the same field. Therefore, in the event of any inconsistency that may arise between the provisions of the PMLA on the one hand and those contained in any other statute, the former, being a special statute, would prevail, as expressly provided under Section 71 of the PMLA.

(ii) BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

20. The BNSS is an improved version of the erstwhile CrPC. This is a procedural Code designed to act as a guiding framework to all the stakeholders in the criminal justice system. While retaining several provisions contained in the earlier statute, a conscious endeavour has been made to make the BNSS citizen-centric, while facilitating the investigating agencies and the Courts.

Section 2(1)(k) of the BNSS

> **"2. Definitions.—(1) In this Sanhita, unless the context otherwise requires,—**
>
> ***
>
> (k) **"inquiry" means every inquiry, other than a trial, conducted under this Sanhita by a Magistrate or Court**;"
>
> (emphasis supplied)

21. Section 2(1)(k) of the BNSS, 2023 defines an "inquiry". An exhaustive and inclusive definition of the said term has been provided by stating

that it would mean every inquiry other than a trial conducted under the BNSS by a Magistrate or a Court. However, it is pertinent to note that an inquiry is a judicial act, as against an administrative one, requiring application of judicial mind which must be reflected through the recording made by a Court. Hence, it is a positive and conscious act done by a Magistrate or a Court.

Section 4 of the BNSS

> **"4. Trial of offences under Bharatiya Nyaya Sanhita, 2023 and other laws.—** (1) All offences under the Bharatiya Nyaya Sanhita, 2023 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
>
> (2) **All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."**
>
> (emphasis supplied)

Section 5 of the BNSS, 2023

> **"5. Saving.— Nothing contained in this Sanhita shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."**
>
> (emphasis supplied)

22. Similar to the provisions contained under the PMLA, Section 4(2) of the BNSS makes the provisions of the BNSS subject to any other enactment

governing the field while dealing with offences under any law apart from those under the Bharatiya Nyaya Sanhita, 2023.

23. Section 5 of the BNSS extends protection to a special or local law, only in the absence of a specific provision to the contrary under the BNSS overriding such special or local law.

Section 210 of the BNSS, 2023

> **"210. Cognizance of offences by Magistrate.—**(1) **Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—**
>
> (a) **upon receiving a complaint of facts, including any complaint filed by a person authorised under any special law, which constitutes such offence**;
>
> (b) upon a police report (submitted in any mode including electronic mode) of such facts;
>
> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
>
> (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."
>
> (emphasis supplied)

Section 213 of the BNSS, 2023

> **"213. Cognizance of offences by Court of Session.— Except as otherwise expressly provided by this Sanhita or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Sanhita. "**
>
> (emphasis supplied)

24. Section 210 of the BNSS deals with cognizance of offences by a Magistrate. Section 210(1)(a) of the BNSS empowers the Magistrate to take cognizance of offences in complaint cases, including complaints which may be filed by an authorised person under any special law.

25. Section 213 of the BNSS bars a Court of Session from directly taking cognizance of an offence, unless the case has been committed to it by the Magistrate. However, it also makes it clear that the said bar shall not apply in case of a contrary provision existing under the BNSS or any other law.

Section 223 of the BNSS, 2023

> **"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."

(emphasis supplied)

26. Section 223 of the BNSS deals with the examination of a complainant. The first proviso to Section 223(1) of the BNSS prohibits the Magistrate from taking cognizance of an offence, unless the accused is given an opportunity of being heard.

27. Though Chapter XVI of the BNSS lays down the procedural law dealing with complaints made to a Magistrate, we hold that the aforesaid proviso is substantive in nature, as it does not merely regulate the manner in which the proceedings are to be conducted, rather it confers a right upon the accused to be heard before taking cognizance which forms a part of the right of an accused to a fair trial enshrined under Article 21 of the Constitution of India, 1950. We further hold that the word "shall" occurring in the said proviso has to be construed to be mandatory in nature, which enures to the benefit of an accused. Resultantly, cognizance of an offence taken by a Court without due compliance of the aforestated proviso would be *void ab initio*.

Section 531 of the BNSS, 2023

> **"531. Repeal and savings.—** (1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.
>
> (2) Notwithstanding such repeal—
>
> (a) **if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force**;"
>
> ***
>
> (emphasis supplied)

28. Section 531(2)(a) of the BNSS has a laudable objective behind it which saves the proceedings initiated under the CrPC, prior to the commencement of the BNSS. It is meant to give a prospective application to the provisions of the BNSS. In other words, once a proceeding such as an appeal, application, investigation, inquiry or trial is initiated under the CrPC, then the same must meet its logical conclusion under the CrPC itself. Thus, we hold that the object of the said provision is to avoid piecemeal application of the CrPC *vis-à-vis* the BNSS.

29. A substantive right conferred under the BNSS would definitely enure to the benefit of an accused against whom none of the proceedings envisaged under Section 531(2)(a) of the BNSS has been initiated. One

has to see the nature of right. It is not a case of either a retrospective or retroactive application, rather it is a prospective one when a better right has been conferred under the BNSS.

LEGAL & FACTUAL ANALYSIS

30. The issue of application of the procedure pertaining to a complaint under the CrPC (now BNSS) to proceedings under the PMLA is no longer *res integra*, as has been elaborately dealt with by this Court in the decisions of **Tarsem Lal *(supra)*, Yash Tuteja *(supra)*** and **Kushal Kumar Agarwal *(supra)***. Though we find that in the instant case the said issue has not been specifically raised either before the Trial Court or the High Court, we are willing to consider the same, being a pure question of law.

31. The submission of the learned ASG that the earlier decision of this Court in **Kushal Kumar Agarwal *(supra)*** will have to be reconsidered and, therefore, be referred to a larger Bench cannot be countenanced. Taking away the applicability of the provisions governing a complaint under Sections 200 to 205 of the CrPC (now Sections 223 to 228 of the BNSS) to the proceedings under the PMLA, including the one that has a serious bearing not only on the right of the accused but also on the power of the Court, would lead to disastrous consequences. If the argument so made

by the learned ASG is accepted, then the Special Court under the PMLA would have no jurisdiction to: dismiss a complaint despite an absolute lack of evidence, postpone the issuance of process, issue process or dispense with the appearance of an accused as provided under Sections 225 to 228 of the BNSS, respectively.

32. In such view of the matter, we are in absolute agreement with the decisions rendered by this Court in **Tarsem Lal *(supra)*, Yash Tuteja *(supra)*** and **Kushal Kumar Agarwal *(supra)***, which we quote profitably.

Tarsem Lal v. Enforcement Directorate, (2024) 7 SCC 61

> **"17. <u>After carefully perusing the provisions of PMLA, we find that there is no provision therein which is in any manner inconsistent with Section 205 CrPC. Hence, it will apply to a complaint under PMLA.</u>** A summons is issued on a complaint to ensure attendance of the accused before the criminal court. If an accused is in custody, no occasion arises for a court to dispense with the personal attendance of the accused. We may note here that Section 205 empowers the court to grant exemption only when a summons is issued. Sub-section (2) of Section 205 provides for enforcing the attendance of the accused before the court at the time of the trial. If the accused who appears pursuant to the summons issued on a complaint were deemed to be in custody, the lawmakers would not have provided for Section ……
>
> ***
>
> 33. Now, we summarise our conclusions as under:
>
> 33.1. **<u>Once a complaint under Section 44(1)(b) PMLA is filed, it will be governed by Sections 200 to 205 CrPC as none of the said provisions are inconsistent with any of the provisions of PMLA</u>**;
>
> 33.2. If the accused was not arrested by ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(*b*), as a normal

rule, the court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued;

33.3. **After a summons is issued under Section 204 CrPC on taking cognizance of the offence punishable under Section 4 PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 CrPC**;

33.4. **In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 CrPC**;"

***

(emphasis supplied)

Yash Tuteja & Anr. v. Union of India, (2024) 8 SCC 465

"6. The only mode by which the cognizance of the offence under Section 3, punishable under Section 4 PMLA, can be taken by the Special Court is upon a complaint filed by the Authority authorised on this behalf. **Section 46 PMLA provides that the provisions of CrPC (including the provisions as to bails or bonds) shall apply to proceedings before a Special Court and for the purposes of CrPC provisions, the Special Court shall be deemed to be a Court of Sessions. However, sub-section (1) of Section 46 starts with the words "save as otherwise provided in this Act". Considering the provisions of Section 46(1) PMLA, save as otherwise provided in PMLA, the provisions of the Code of Criminal Procedure, 1973 (for short "CrPC") shall apply to the proceedings before a Special Court. Therefore, once a complaint is filed before the Special Court, the provisions of Sections 200 to 204 CrPC will apply to the complaint. There is no provision in PMLA which overrides the provisions of Sections 200 to Sections 204 CrPC. Hence, the Special Court will have to apply its mind to the question of whether a prima facie case of a commission of an offence under Section 3 PMLA is made out in a complaint under Section 44(1)(b) PMLA. If the Special Court is of the view that no prima facie case of an offence under Section 3 PMLA is made out, it must exercise the power under Section 203 CrPC to dismiss the complaint. If a prima facie case is made out, the Special Court can take recourse to Section 204 CrPC."**

(emphasis supplied)

Kaushal Kumar Agarwal v. Directorate of Enforcement, 2025 SCC OnLine SC 1221.

> **"5. This Court has taken a consistent view that a complaint filed by the Enforcement Directorate under Section 44 (1) (b) of the PMLA will be governed by Sections 200 to 204 of the CrPC. This view has been taken by this Court in the cases of Yash Tuteja v. Union of India, (2024) 8 SCC 465, and Tarsem Lal v. Enforcement Directorate, (2024) 7 SCC 61. Therefore, the provisions of Chapter XVI, containing Sections 223 to 226, will also apply to a complaint under Section 44 of the PMLA. As the complaint has been filed after 1st July, 2024, Section 223 of the BNSS will apply to the present complaint.**
>
> **6.** The **proviso to sub-section (1) of Section 223 puts an embargo on the power of the Court to take cognizance by providing that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.**
>
> **7.** In this case, admittedly, an opportunity of being heard was not given by the learned Special Judge to the appellant before taking cognizance of the offence on the complaint. Only on that ground, the impugned order dated 20th April, 2024, will have to be set aside."
>
> (emphasis supplied)

33. Accordingly, we have no hesitation in holding that Sections 200 to 205 of the CrPC (now Sections 223 to 228 of the BNSS) would be applicable to proceedings under the PMLA.

34. A mere ministerial act cannot be termed as an "inquiry" under Section 2(1)(k) of the BNSS. Taking cognizance is nothing but an application of judicial mind. So long as the application of the judicial mind is not exercised, an inquiry cannot commence. It is the judicial notice of an offence by the Court which is relevant. While doing so, it is presumed that the Court would take note of the complaint along with the materials placed before it.

35. The learned ASG placed reliance upon the decision of this Court in **Hardeep Singh** ***(supra)*** to contend that in the facts of the instant case, the inquiry had been initiated upon filing of the prosecution complaint on 24.06.2024 which is, admittedly, prior to the commencement of the BNSS on 01.07.2024. We find that the said decision actually militates against the submission made by him, and would only quote the following paragraphs in the aforesaid decision:

> **"26.** In *Raghubans Dubey v. State of Bihar*, AIR 1967 SC 1167, this Court held: (AIR p. 1169, para 9)
>
> "9. ... once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence."
>
> **27. The stage of inquiry commences, insofar as the court is concerned, with the filing of the charge-sheet and the consideration of the material collected by the prosecution, that is mentioned in the charge-sheet for the purpose of trying the accused. This has to be understood in terms of Section 2(g) CrPC, which defines an inquiry as follows:**
>
> **"2. (g) 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or court."**
>
> **28. In *State of U.P. v. Lakshmi Brahman*, (1983) 2 SCC 372, this Court held that from the stage of filing of charge-sheet to ensuring the compliance with the provision of Section 207 CrPC, the court is only at the stage of inquiry and no trial can be said to have commenced. The above view has been held to be per incuriam in *Raj Kishore Prasad v. State of Bihar*, (1996) 4 SCC 495, wherein this Court while observing that Section 319(1) CrPC operates in an ongoing inquiry into, or trial of, an offence, held that at the stage of Section 209 CrPC, the court is**

neither at the stage of inquiry nor at the stage of trial. Even at the stage of ensuring compliance with Sections 207 and 208 CrPC, it cannot be said that the court is at the stage of inquiry because there is no judicial application of mind and all that the Magistrate is required to do is to make the case ready to be heard by the Court of Session."

(emphasis supplied)

36. As rightly held by this Court in **Hardeep Singh** ***(supra)***, even the stage of ensuring compliance with Sections 207 to 209 of the CrPC, 1973 cannot be termed as an inquiry because there is no application of judicial mind. In the facts of the instant case, the direction issued by the Special Court, *vide* order dated 24.06.2024, to number the complaint and, thereafter, post the matter on a future date for hearing on cognizance would certainly not come within the purview of an "inquiry" under Section 2(1)(k) of the BNSS. In such view of the matter, the aforestated contention raised by the learned ASG falls to the ground.

37. As already discussed, though the complaint under the PMLA was filed earlier, the cognizance was only taken subsequently, on 02.07.2024, by which time the BNSS had come into force. Admittedly, the appellant has not been heard at the time of taking cognizance. The mandate of a legislation which ensures the right of an accused to a fair trial, whose liberty is at stake, cannot be dispensed with. Thus, the contention of the learned ASG that prejudice caused due to non-hearing at the stage of cognizance will have to be shown by the accused cannot be accepted, as

it is not a mere irregularity that would attract either Section 506 or 511 of the BNSS, but is an illegality that would vitiate the very proceedings.

38. Based on the above discussion, the views expressed by the High Court are, therefore, liable to be set aside. We do find that the allegations against the appellant are quite serious. However, non-compliance with the first proviso to Section 223(1) of the BNSS vitiates the very order taking cognizance, and the same cannot be sustained in the eyes of the law. In fact, the appellant has, at the earliest point in time, filed the application for recall of the order taking cognizance by placing reliance upon the said proviso. Had the Special Court allowed it, the trial would have proceeded further. Suffice it to state that the appellant cannot be faulted for any delay that has occasioned.

39. For the foregoing reasons, the impugned judgment of the High Court dated 19.05.2025 and the order taking cognizance by the Special Court dated 02.07.2024 stand set aside.

40. The Special Court is directed to afford an opportunity of hearing to the appellant by proceeding from the stage of taking cognizance. The aforestated exercise must be completed within a period of 8 weeks from the date of receipt of a copy of this judgment.

41. The appeal stands allowed, accordingly.

42. Pending application(s), if any, shall stand disposed of.

…… J.

(M. M. SUNDRESH)

……..…… J.

(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
MAY 19, 2026