



2025:KER:55025

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 25<sup>TH</sup> DAY OF JULY 2025 / 3RD SRAVANA, 1947

CRL.MC NO. 5631 OF 2025

IN S.C. NO.2 OF 2025 OF SPECIAL COURT (SPE/CBI), ERNAKULAM

PETITIONERS/ACCUSED 1 AND 2:

1 SAJI JOHN  
AGED 54 YEARS  
S/O LATE SHRI TK ULAHANAN, MATTATHILPUTHENPURAYIL HOUSE,  
ELANJI PO, ALAPURAM, ERNAKULAM DISTRICT, KERALA,  
PIN - 686636

2 BINDHU SAJI  
AGED 53 YEARS  
W/O.SAJI JOHN, MATTATHILPUTHENPURAYIL HOUSE, ELANJI PO  
ALAPURAM, ERNAKULAM DISTRICT, KERALA, PIN - 686636

BY ADVS.  
SHRI,ARJUN VARMA  
SHRI.ROHITH R.

RESPONDENT/COMPLAINANT:

ASSISTANT DIRECTOR  
DIRECTORATE OF ENFORCEMENT, GOVERNMENT OF INDIA COCHIN ZONAL  
OFFICE, KANOOS CASTLE MULLASSERY CANAL ROAD WEST KOCHI  
KERALA, PIN - 682011

JAISHANKAR V.NAIR - SC (ENFORCEMENT DIRECTORATE)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 25.07.2025,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**“C.R.”****ORDER****Dated this the 25<sup>th</sup> day of July, 2025**

This Criminal Miscellaneous Case has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereinafter referred as ‘BNSS’ for short], to quash all further proceedings in S.C. (PMLA) No.2 of 2025 on the files of the Court of the Special Court (SPE/CBI), Ernakulam, arose out of ECIR/KCZO/07/2020 initiated pursuant to FIR No.V.C.02/2014/SCE of VACB, Special Cell, Ernakulam. The petitioners herein are accused Nos.1 and 2 in the above case.

2. Heard the learned counsel for the petitioners and the learned Standing Counsel appearing for Enforcement Directorate, in detail. Perused the relevant materials available.

3. In this matter, the prosecution allegation is that, the 1<sup>st</sup> accused/1<sup>st</sup> petitioner, while working as a Government servant during the period from 01.01.2000 to



17.01.2014, amazed assets worth Rs.1,43,58,155/-, which is 113.45% in excess of his known sources of income and thereby committed offences 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988 and under Section 4 read with 3 of the Prevention of Money-Laundering Act, 2002 [hereinafter referred as 'PMLA' for short] by the accused.

4. According to the learned counsel for the petitioners, in this case, the Special Court took cognizance for the offences punishable under Section 4 read with 3 of PMLA, based on a complaint lodged by the Enforcement Directorate, without issuing notice provided under Section 223 (1) and (2) of the BNSS to the accused. It is also submitted by the learned counsel for the petitioners that, the cognizance was taken even without obtaining sanction under Section 218 of the BNSS. Therefore, the cognizance is illegal and the same is liable to be set aside. In this connection, the learned counsel for the petitioners placed decision of the Apex Court reported in **[2025 (4) KHC 559 (SC) : 2025 SCC OnLine SC 1221 : 2025 KHC OnLine 6565 (SC)] Kushal Kumar Agarwal v. Directorate of**



**Enforcement**, wherein the facts of the case dealt by the Apex Court read as under:

*Enforcement Directorate filed a complaint under Section 44(1)(b) of the Prevention of Money Laundering Act, 2002 on 02/08/2024, against the appellant for money laundering offences. Complaint was filed after the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) came into force on 01/07/2024, which replaced the earlier Code of Criminal Procedure, 1973. Special Court took cognizance of the offence without providing the appellant an opportunity of being heard, as mandated under the Proviso to Section 223(1) of the BNSS. Questions that arose for consideration were; whether cognizance of an offence under the PMLA can be taken without complying with the mandatory procedural requirement under Section 223(1) of the BNSS, which requires giving the accused an opportunity of being heard before taking cognizance, and whether this new procedural safeguard introduced in the BNSS applies to money laundering complaints filed by the Enforcement Directorate.*

5. Thereafter, allowing the prayer sought for, the Apex Court held in paragraph Nos. 6 and 7 as under:



*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. 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.*

6. The learned counsel for the petitioners also placed another decision of the Apex Court reported in **[2024 (3) KHC 524 : 2024 KHC OnLine 6299 : 2024 SCC 1653] Tarsem Lal v. Directorate of Enforcement Jalandhar Zonal Office**, with reference to paragraph No.23 to contend that, Sections 200 to 205 of the Code of Criminal Procedure [hereinafter referred as 'Cr.P.C.' for short] analogous to Sections 223 to 228 of the BNSS would apply when complaint under Section 44(1)(b) of the PMLA is lodged.

7. Apart from that, another decision of the Apex



Court reported in **[2024 KHC OnLine 6609 : 2024 KHC 6609 : 2024 (7) KHC SN 7] Directorate of Enforcement v. Bibhu Prasad Acharya**, also has been placed by the learned counsel for the petitioners, with reference to paragraph Nos. 14 to 18, to contend that, separate sanction under Section 197 of Cr.P.C. analogous to Section 218 of the BNSS also would apply, insofar as complaint alleging commission of offences under the PMLA is concerned.

8. The learned Standing Counsel appearing for Directorate of Enforcement fairly conceded the legal positions argued by the learned counsel for the petitioners. The learned Standing Counsel submitted further that, the matter can be reverted back to the pre-cognizance stage after setting aside the order taking cognizance.

9. Adverting to the legal position, it is necessary to extract Section 223(1) of BNSS and the same provides 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 under this section 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 further 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:*

*Provided further that in case of a complaint against a public servant, the Magistrate shall comply with the procedure provided in section 217.*



10. Section 223(1) of the BNSS outlines the procedure for the examination of a complainant by a Magistrate when taking cognizance of an offence based on a complaint. It mandates that the Magistrate must examine the complainant and any witnesses present, record their statements under oath, and have these statements signed by all parties involved. A key addition in Section 223(1) of the BNSS is the requirement that the accused must be given an opportunity to be heard before the Magistrate takes cognizance of the offence.

11. Thus, the crucial aspect of Section 223(1) is the first proviso, which mandates that the Magistrate cannot take cognizance of the offence without first giving the accused an opportunity to be heard. This is a significant departure from the provisions of the Cr.P.C, which did not mandate this pre-cognizance hearing for the accused.

12. Similarly, examination of the complainant and witnesses is not required if the complaint is made by a public servant in their official capacity or by a court. Additionally, if a case is transferred under Section 212 of





BNSS, the new Magistrate is not required to re-examine the complainant and witnesses if they were already examined by the previous Magistrate.

13. Thus, on evaluation of the materials available and the order issuing summons after taking cognizance, it is emphatically clear that, in this case, the cognizance taken by the learned Special Judge is without complying the mandate of the first proviso to Section 223 (1) of the BNSS and therefore, the same is non est. Hence, the same is liable to be set aside.

14. Accordingly, this petition stands allowed and thereby, the cognizance taken by the Special Judge as per the order dated 27.03.2025 stands set aside and the case is reverted back to the pre-cognizance stage, with direction to the Special Judge to comply first proviso to Section 223(1) of the BNSS, before taking cognizance in this case. At the same time, in consideration of the argument advanced by the learned counsel for the petitioners, supported by the decisions of the Apex Court, before taking cognizance, the Special Court shall also



consider the question of sanction under Section 197 of Cr.P.C. or under Section 218 of the BNSS.

Registry is directed to forward a copy of this order to the Special Court, forthwith, for information and further steps.

**Sd/-**  
**A. BADHARUDEEN**  
**JUDGE**

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**APPENDIX OF CRL.MC 5631/2025**

**PETITIONER ANNEXURES**

- Annexure 1**                    **A TRUE COPY OF THE CHARGE SHEET NO. 1/2020 DATED 6/3/2020 FILED BY VACB SPECIAL CELL ERNAKULAM BEFORE THE HON'BLE ENQUIRY COMMISSIONER AND SPECIAL JUDGE MUVATTUPUZHA AGAINST THE 1ST PETITIONER**
- Annexure II**                    **TRUE COPY OF THE PROSECUTION COMPLAINT IN SC (PMLA) NO 2/2025 DATED 06.03.2025 BEFORE SPECIAL COURT (SPE/CBI) 1, ERNAKULAM**
- Annexure III**                    **TRUE COPY OF THE SUMMONING ORDER DATED 7/3/2025 IN SPECIAL COURT (SPE/CBI) 1, ERNAKULAM IN SC (PMLA) 2/2025**