IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29954-2025

Pronounced on: 29.07.2025

Sikander Singh ….Petitioner

Versus

Directorate of Enforcement, Gurugram ….Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Vikram Chaudhri, Senior Advocate
(through video conferencing), assisted by
Ms. Hargun Sandhu, Advocate, for the petitioner.

Mr. Zoheb Hussain, Special Counsel
(through video conferencing), assisted by
Mr. Lokesh Narang, Senior Panel Counsel, for the respondent.

TRIBHUVAN DAHIYA, J.

The petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS'), for setting aside order dated 22.11.2024, Annexure P-6, whereby Special Judge [under the Prevention of Money Laundering Act, 2002 (for short, 'PMLA')]-cum-Sessions Judge, Gurugram, dismissed the petitioner's application filed under Section 223 read with Section 511 of the BNSS seeking an opportunity of hearing before taking cognizance of offences alleged in prosecution complaint, dated 27.06.2024, filed against him. Prayer has also been made to set aside order dated 05.12.2024, Annexure P-8, whereby the Special Judge proceeded to take cognizance of the offences against the petitioner and

summoned him along with other accused to face trial for commission of offences under Section 3 read with Section 70 punishable under Section 4 of the PMLA in case COMA-9-2024 titled *Directorate of Enforcement* v. *Sikander Singh and others* arising out of ECIR/GNZO/20/ 2021, dated 16.11.2021.

2. As per facts apparent on record, in brief, an enquiry, ECIR/GNZO/20/2021 dated 16.11.2021, pertaining to the aforementioned offences under the PMLA was registered by the respondent, pursuant whereof the petitioner was arrested in the case on 30.04.2024. The prosecution complaint in the matter under Sections 44 and 45 of the PMLA was presented before the Additional Sessions Judge/Vacation Judge, Gurugram, on 27.06.2024. As it was required to be heard by the Sessions Judge, Gurugram, being the Special Judge under the PMLA, the Additional Sessions Judge directed to check and register the complaint, and sent the file to the Sessions Judge immediately for 04.07.2024. The case was taken up by the Sessions Judge/Special Judge on 31.07.2024, but was not heard and adjourned to 14.08.2024 for consideration. Thereafter also, it was adjourned on a few more dates for one reason or another and hearing could not take place, as apparent from the short orders placed on record as Annexure P-4.

2.1. In the meanwhile, the BNSS came into force with effect from 01.07.2024. In terms of proviso to Section 223 thereof, a right of hearing has been provided to the accused at the time of taking cognizance of offence. Accordingly, the petitioner moved an application under Section 223 before the Special Judge seeking an opportunity of hearing before taking cognizance of the complaint dated 27.06.2024.

2.2. The Special Judge heard arguments on the application, and dismissed the same vide impugned order dated 22.11.2024. It was held that the prosecution complaint was filed on 27.06.2024, i.e., before coming into force of the BNSS and, accordingly, provisions of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') will be applicable which do not provide any right of hearing to the accused at the time of taking cognizance. Thereafter, the Special Judge heard the complaint and finding a *prima facie* case proceeded to take cognizance of the offences against the accused/petitioner vide impugned order dated 05.12.2024.

3. In this background, the solitary submission made by learned senior counsel for the petitioner is that the impugned order is without jurisdiction being violative of proviso to Section 223 of the BNSS as the petitioner has not been afforded an opportunity of hearing in terms thereof before taking cognizance of the offences against him. The mandate of proviso to Section 223 has to be complied with. The Special Court has gone patently wrong in holding that the prosecution complaint was filed on 27.06.2024, as mere presentation of the complaint on that date cannot be construed as filing of the complaint. Judicial mind of the Court was not applied at that time; it was presented and kept pending only for performing purely administrative functions of forwarding the case file to the Special Court for 04.07.2024. Therefore, it cannot be considered commencement of an 'inquiry' under Section 2(g) of the Cr.P.C., protected under the repealing provision Section 531 of the BNSS. The judicial application of mind to the case was after coming into force of the BNSS, i.e., 05.12.2024, accordingly, the petitioner was required to be given an opportunity of hearing before taking cognizance. In support of the submissions, learned senior counsel has

placed reliance upon order, dated 09.05.2025, passed by the Supreme Court in Criminal Appeal No.2749 of 2025 titled *Kushal Kumar Agarwal* v. *Directorate of Enforcement*. In that matter ECIR was registered against the appellant/complainant on 24.04.2014, and the Special Judge (PC Act) took cognizance against him on 20.11.2024, in a complaint filed by the Directorate of Enforcement under Section 44(1)(b) of the PMLA. Since by the time cognizance was taken the BNSS had been enforced, the Supreme Court directed the trial Court to afford hearing to the appellant under proviso to Section 223 of the BNSS.

4. Learned counsel for the respondent, on the contrary, contends that ECIR is not an FIR, as it is an internal document of the Directorate. Therefore, by registration of ECIR no inquiry or proceedings can be said to be pending against the accused in a Court, and Section 2(g) of the Cr.P.C. will not apply. It applies when the prosecution complaint is forwarded to the Court. Accordingly, the date of filing the complaint against the accused becomes the terminal date, and in the instant case, undisputedly, it was filed on 27.06.2024, when provisions of the Cr.P.C. were applicable which would not give any right of hearing to the petitioner/accused. He has also contended that in *Kushal Kumar Agarwal* case *ibid*, direction was issued to afford a hearing only because the complaint under the PMLA had been filed on 02.08.2024, i.e., after coming into force of the BNSS. It held, '…*As the complaint has been filed after 1st July, 2024, Section 223 of the BNSS will apply to the present complaint.'*

5. Submissions made by learned counsel for the parties have been considered.

6. The only issue arising for consideration is, *whether the petitioner was entitled to hearing in terms of proviso to Section 223 of the BNSS before taking cognizance of the offences against him vide impugned order dated 05.12.2024*.

7. To address the issue, a reference needs to be made to Section 531(2) of the BNSS, which reads as under:

> **531. Repeal and savings.**—(1) xxx xxx
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> (2) Notwithstanding such repeal—
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> (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;
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> (b) and (c) xxx xxx

Apparently, the savings clause provides in case any appeal, application, trial, inquiry or investigation is pending immediately before the date of enforcement of the BNSS, the same shall be disposed of, continued, held or made in accordance with the provisions of the Cr.P.C.

7.1. It is no longer *res integra* that a complaint filed by the Enforcement Directorate under the PMLA is governed by the provisions of Sections 200 to 204 Cr.P.C. Sections 200 and 202 read as under:

> **200. Examination of complainant**.—(1) A Magistrate 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, 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 192:

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

202. Postponement of issue of process.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) and (3) xxx xxx

Section 2(g) of the Cr.P.C. defines ‘inquiry’ which reads as under:

2. Definitions.—In this Code, unless the context otherwise requires,—

(a) to (f) xxx xxx

(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

As apparent, under Section 200 Cr.P.C., a Magistrate is empowered to take cognizance of an offence on examining the complainant and the witnesses present. Under Section 202 Cr.P.C., the Magistrate may postpone the issue of process and inquire into the complaint of an offence triable by him, or direct investigation by a police officer or any other person, as he thinks fit. In case the accused resides beyond his jurisdiction, the issue of process has to be postponed mandatorily to hold the inquiry or investigation, as the case may be. The word 'inquiry', under Section 2(g) Cr.P.C. refers to an inquiry other than a trial conducted under the Code by a Magistrate or Court.

7.2. The new enactment, BNSS, has Section 223 which provides jurisdiction to the Magistrate to take cognizance of an offence, but only after affording an opportunity of hearing to the accused; it reads 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) xxx xxx

7.3. In the instant case, the respondent *presented* the prosecution complaint before the Additional Sessions Judge on 27.06.2024, who ordered to check and register the same, and sent the file to the competent Court/Special Judge for 04.07.2024. Although the matter was listed for hearing before the Special Judge on 31.07.2024, the arguments for taking cognizance of offences were not advanced. It therefore needs to be ascertained as to whether presentation/filing of the complaint amounts to commencement of inquiry into it. In terms of Section 2(g) Cr.P.C., 'inquiry' means an inquiry other than trial *conducted* by a Magistrate or Court under the Code. Section 202 Cr.P.C. further provides that any Magistrate, on receipt of a complaint of an offence he is authorised to take cognizance of, can inquire into the case himself or order investigation by a Police officer. Therefore, the pre-requisite to such an inquiry is the Magistrate's competence to take cognizance of the offence alleged. Unless the offence is triable by the Magistrate, he is precluded from inquiring into it. Such an inquiry without doubt requires taking evidence on oath and/or applying mind to test veracity of the allegations to find out *prima facie* grounds for issuing the process. Resultantly, except when the Magistrate has applied judicial mind to the complaint in the manner stipulated under Sections 202 to 204 Cr.P.C., an inquiry cannot be said to have commenced or pending before

him/her. Mere filing/presentation of a complaint, or its registration for being sent to the competent Court for taking cognizance, would not require application of judicial mind. In such cases, Magistrate only performs the administrative act of sending the case file to the competent Court on coming to know that the offences are not triable by him/her. This is not an application of judicial mind to the allegations in the complaint and will not fall within the ambit of *inquiry* under Section 2(g) Cr.P.C. Consequently, the filing of prosecution complaint by the respondent before the Additional Sessions Judge on 27.06.2024 would not attract Section 531(2)(a) BNSS so as to make provisions of the Cr.P.C. applicable to it, because neither the Additional Sessions Judge was competent to take cognizance of the alleged offences under the PMLA, nor did he apply judicial mind to the complaint/allegations. And cognizance of the offences was taken by the Special Judge after coming into force of the BNSS, vide impugned order dated 05.12.2024.

8. There is another aspect of the matter, and the provision of Section 223 BNSS needs to be considered in the light of 'rule of beneficial construction' of a statute. The provision provides a right of hearing to the accused before issuing of process against him by the Court, which is not provided under Section 200 Cr.P.C. The two provisions, Section 200 Cr.P.C. and Section 223 BNSS, are *pari materia* except the first proviso to latter which has created a new procedure for taking cognizance only after giving an opportunity of hearing to the accused. Issuing process of a criminal offence has serious repercussions for the accused, and that is the reason the Legislature deemed it appropriate to provide prior hearing to the person sought to be summoned. The right of hearing is one of the most cherished

rights in the criminal jurisprudence, and is embedded in the Principles of Natural Justice permeating to the Constitutional scheme of things, especially Articles 14 and 21 guaranteeing the right to fair trial. Therefore, there is no reason why the benefit of hearing should not be afforded to the accused after coming into force of the BNSS, even if complaint against him has been technically filed before coming into force of the BNSS on 01.07.2024. The interests of justice and fair trial require the right should be given in such cases by applying the rule of beneficial construction of statute, as the provisions of Section 200 Cr.P.C. and 223 BNSS, meant for taking cognizance of offence on a complaint, are not in contravention of each other and only the procedure of taking cognizance has been varied to the limited extent of providing prior hearing to the accused.

8.1. The Courts have applied the rule to give benefit of *ex-post facto* laws to the accused. A case in point is *T. Barai* v. *Henry AH HOE and another*, (1983) 1 SCC 177, wherein the Supreme Court considered the issue whether the Central Amendment Act [Prevention of Food Adulteration (Amendment) Act, 1976] will impliedly repeal the West Bengal Amendment Act [Prevention of Adulteration of Food, Drugs and Cosmetics (West Bengal Amendment) Act, 1973], which provided for imprisonment for life on account of commission of offence under Section 16(1)(a) read with Section 7 of the Act. By way of the Central Amendment Act, Section 16-A was inserted in the original Act which came into force on 01.04.1976, providing for a varied procedure of trial and lesser punishment for the said offence. The accused therein was on trial as his food sample was found to be adulterated, and the complaint had been lodged against him on 24.09.1975. Applying the rule of beneficial construction of statute, it was held that the

accused would be entitled to the benefit of such reduced punishment. The rule requires that even an *ex-post facto* law which is not in contravention of the earlier law, should be applied to mitigate the rigor of the law. It was held as under:

> 22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. …
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> 23. To illustrate, if Parliament were to reenact Section 302 of the Indian Penal Code, 1860 and provide that the punishment for an offence of murder shall be sentence for imprisonment for life instead of the present sentence of death or imprisonment for life, then it cannot be that the courts would still award a sentence of death even in pending cases.
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> 24. In Rattan Lal v. State of Punjab, the question that fell for consideration was whether an appellate court can extend the benefit of Probation of Offenders Act, 1958 which had come into force after the accused had been convicted of a criminal offence. The Court by majority of 2:1 answered the question in the affirmative. Subba Rao, J. who delivered a majority opinion, concluded that in considering the question, the rule of beneficial construction required that even ex post facto law of the type

involved in that case should be applied to reduce the punishment.

25. xxx xxx

26. In the premises, the Central Amendment Act having dealt with the same offence as the one punishable under Section 16(1) (a) and provided for a reduced punishment, the accused must have the benefit of the reduced punishment. …

8.2. When an *ex-post facto* law can be applied to give the benefit of reduced punishment to a person accused of committing an offence under the unamended statute by invoking the rule of beneficial construction, it can be made applicable to the instant case as well. It is accordingly held that the varied procedure of giving prior hearing to the accused before taking cognizance will apply to the prosecution complaint in question, which gives the petitioner right of hearing in terms of Section 223 BNSS.

9. In view thereof, the impugned orders, dated 22.11.2024 and 05.12.2024, are set aside directing the Special Judge under the PMLA to pass a fresh order after affording an opportunity of hearing to the petitioner in terms of first proviso to Section 223(1) BNSS, within a period of eight weeks of receiving a certified copy of this order.

10. Petition stands allowed in the aforesaid terms.

(TRIBHUVAN DAHIYA)
JUDGE

29.07.2025
Maninder

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No