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CrI.O.P.No.21287 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.08.2025	Pronounced on: 08.12.2025
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CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESHand**THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN**CrI.O.P.No.21287 of 2025andCrI.M.P.No.14592 of 2025

G.Ganesan

.. Petitioner

Vs.

The Deputy Director,
Directorate of Enforcement,
Ministry of Finance,
Chennai Zonal Office-II,
B-Wing, Shastri Bhawan,
Haddows Road,
Chennai – 600 006.

.. Respondent

Prayer: Petition filed under Section 528 of BNSS praying to call for the entire records pertaining to the impugned order dated 17.03.2025 passed in C.C.No.9 of 2023 pending on the file of Principal Sessions Judge, cum Special Court constituted under the Prevention of Money Laundering Act, Chennai, pertaining to taking cognizance of the supplementary complaint in the absence of sanction under Section 197 CrPC/218 of BNSS and without affording an opportunity of being heard before taking



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cognizance under Section 223(1) of the BNSS and set aside the same.

For Petitioner : Dr.S.Muralidhar
Senior Counsel
for Mr.M.Guruprasad and
Ninni Sugan Thomas

For Respondent : Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by
Mr.Rajnish Pathiyil
Special Public Prosecutor (ED)

ORDER

(Order of the Court was made by V.LAKSHMINARAYANAN, J.)

This is a petition presented under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, (hereinafter referred to as 'BNSS'). This petition seeks the following prayer:

“to call for the entire records pertaining to the impugned order dated 17.03.2025 passed in C.C.No.9 of 2023 pending on the file of Principal Sessions Judge, cum Special Court constituted under the Prevention of Money Laundering Act, Chennai, pertaining to taking cognizance of the supplementary complaint in the absence of sanction under Section 197 CrPC/218 of BNSS and without affording an opportunity of being heard before taking cognizance under Section 223(1) of the BNSS and set aside the same.”



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Facts leading to the case

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2.The petitioner was appointed as an Assistant Engineer in the State Transport Corporation in 1987. Progressively, he secured promotion to several higher posts. In or about the year 2015, the petitioner was working as Deputy Manager in Metropolitan Transport Corporation, Chennai. During that time, recruitment process commenced for several posts like Reserve Crew Drivers, Reserve Crew Conductors, Junior Tradesmen (JTM), Junior Assistants (JA), Junior Engineers (JE) and Assistant Engineers (AE). The recruitment was for various transport corporations across the State of Tamil Nadu. Allegations were made, that the recruitment process was mired in illegalities and malpractices.

3.One, S.Devasahayam lodged a complaint before the Central Crime Branch, Chennai. An FIR was also registered in Crime No.441 of 2015 on 29.10.2015. The FIR invoked three Sections, namely, Sections 406 and 420 read with Section 34 of IPC. Final report in C.C.No.3627 of 2017 was filed before the learned Metropolitan Magistrate for CCB and CBCID (Metro) Cases, Chennai. As one of the accused happened to be a former Minister of the State of Tamil Nadu, the case was transferred to



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the Special Court for MP / MLA cases and re-numbered as C.C.No.22 of 2021.

4.On further investigation, a final report was filed in C.C.No.24 of 2021, including the offences under the Prevention of Corruption Act, 1988. The irregularities in recruitment process gave rise to two more complaints. One, FIR.No.298 of 2017 in C.C.No.4541 of 2018 under Sections 420, 506(i) read with Section 34 of IPC before CCB Court, Egmore. On transfer, the Special Court renumbered it as C.C.No.19 of 2020. The other complaint being FIR.No.344 of 2018, corresponding to C.C.No.8591 of 2019 under Sections 406, 409, 420, 506(i) read with 34 of IPC before CCB Court at Egmore and renumbered in C.C.No.25 of 2021, is pending on the file of the Special Court.

5.The petitioner is Accused No.7 (A7) in C.C.No.24 of 2021 and Accused No.23 (A23) in C.C.No.25 of 2021. In this petition, we need not go into the details of the aforesaid proceedings. They have been set forth in order to show that these were predicate offences, on the basis of which the respondent initiated proceedings under the provisions of The Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA, 2002').



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6.The respondent registered ECIR.No.MDSZO/21/2021 on 29.07.2021. On completion of the investigation, the respondent presented a complaint invoking Section 44(1)(b) and Section 45 of PMLA, 2002 against the former Minister, Thiru.V.Senthil Balaji alone, before the Principal Sessions Court at Chennai. The complaint was taken cognizance of by the learned Judge and numbered as C.C.No.9 of 2023. This took place on 12.08.2023. The Principal Sessions Court proceeded with the trial and P.W.1 to P.W.5 were examined. Examination of P.W.6 was conducted on 26.03.2025.

7.The respondent presented a supplementary complaint which was taken on file on 26.03.2025. In the supplementary complaint, 13 persons have been shown as accused. The petitioner is the 5th accused. The supplementary complaint alleges that, as the Deputy Manager Personnel of the Metropolitan Transport Corporation, Chennai, the applicant, apart from manipulating the selection process in the aforesaid posts had kept in his house, a sum of Rs.12,50,000/- for safe custody. He did so on the instructions of his Superior Officer, in MTC one, Mr.A.Ravindra Daniel, SDM (HRD).



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8.He is further alleged to have handed over the bag containing a sum of Rs.12,50,000/- to two persons, who were sent by Thiru.V.Senthil Balaji. The learned Special Judge issued summons to the petitioner. On receipt of summons, the petitioner appeared before the Court on 09.04.2025. He received copies of the documents relied upon by the prosecution on 09.06.2025. Thereafter, he applied for the copies of the orders, passed by the learned Principal Sessions Judge dated 17.03.2025 and is before this Court challenging the same.

9.When the matter came up for admission, Mr.Rajnish Pathiyil, learned Special Public Prosecutor for the respondent took notice. He sought time to file a counter, which we granted. He filed his counter on 06.08.2025. Thereafter, we took up the matter for final disposal.

10.We heard Dr.S.Muralidhar, Senior Counsel appearing on behalf of Mr.M.Guruprasad and Mr.AR.L.Sundaresan, Additional Solicitor General for Mr.Rajnish Pathiyil.

11.After narrating the facts, Dr.S.Muralidhar, Senior Counsel submitted as follows:



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(i) In terms of Section 223(1) of BNSS, a Magistrate cannot take cognizance of an offence, unless the accused is heard;

(ii) Supplementary complaint filed by the respondent is untenable, as there was no further investigation leading to further evidence against the accused persons;

(iii) The act of taking cognizance is not an empty formula and the Special Court is not a Post Office to receive any papers that are presented by the respondent;

(iv) The order taking, cognizance on 14.08.2023, does not satisfy the requirements of Section 190 read with Sections 200 to 204 of the Code; and finally

(v) Prior sanction had not been accorded, as required under Section 218 of BNSS. He points out, while the respondent has taken sanction for prosecution under Section 19 of the Prevention of Corruption Act, 1988, on 26.02.2021, no such sanction had been taken with respect to Section 218 of BNSS, corresponding to Section 197 of the Code.

12. He circulated two typed set of judgments to support his contentions. We will refer to the same during the course of this judgment.



13.Per contra, Mr.AR.L.Sundaresan, Additional Solicitor

General points out as follows:

(i) By virtue of Section 531(2)(a) of the BNSS, it is the Code, which will be applicable to the case and not BNSS;

(ii) The supplementary complaint is not a fresh proceeding, but one covered under Section 44 explanation (ii) of PMLA, 2002;

(iii)It is erroneous to urge that no further investigation was carried out. The supplementary complaint contains new materials which were found subsequently by the investigating agency.

(iv)As an alternative, he would submit that, even though the materials were already available with the prosecution, if an accused has been left out, she / he can always be brought in by way of a supplementary complaint, as there is no bar to the same;

(v)Torpedoing the argument that on the aspect of cognizance by the Special Court, he states that the Trial Judge had perused the materials and found, that sufficient materials are available and only thereafter, summons were issued. Qua the argument that cognizance was taken against Thiru.V.Senthil Balaji at the first instance, Mr.AR.L.Sundaresan states that the Court takes cognizance of the offence and not of the offender.



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(vi) Finally, he submitted no sanction is necessary under Section 197 of the Code as a Government Servant is not expected to participate in a criminal conspiracy and acts of money laundering and plead that it was in connection with the affairs of the State.

14. Mr. A.R.L. Sundaresan, Additional Solicitor General too submitted a set of judgments, which we shall deal with later.

15. We have carefully gone through the records and have analyzed the authorities submitted by both sides.

16. During the course of this judgment, we will have to discuss the scope of Code, BNSS as well as PMLA, on account of Section 65 of PMLA. Section 65 makes it clear, that the Code applies to arrest, search, seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the PML Act, when they are not in conflict with the PMLA.

17. PMLA defines the meaning of 'investigation'. This is found under Section 2(na). Similarly, the words 'inquiry' and 'investigation' are found under Section 2(k) and 2(l) of the BNSS



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respectively. We should point out here that 2(k) and 2(l) of BNSS are identical to 2(g) and 2(h) of the Code, 1973. Reading of Section 2(na) along with 2(l) and 531(2)(a) of the BNSS, one can reach the conclusion that, if an investigation had commenced under the Code, then it should continue under the same Code. The fact that the Parliament brought about a new Code will not give an additional tool to the petitioner, to plead that the new Code should be made applicable to a pending trial or a pending investigation. In this case, as seen above, the trial had already commenced, insofar as Thiru.V.Senthil Balaji is concerned, much prior to the commencement of BNSS. Even if we were to keep this aspect aside, investigation as understood under section 2(na) of PML Act read with Section 2(h) of the Code had commenced much before 01.07.2024, the date on which the new regime of BNSS came into force.

18.The plea of Dr.S.Muralidhar, is that, the Special Judge violated the mandatory provisions of Section 223(1) of the BNSS. He is right that the proviso appended to Section 223(1) of the BNSS calls upon a Magistrate to hear the accused before taking cognizance. The proviso acts as an embargo on the power of the Court to take cognizance without giving the accused an



opportunity of being heard. No one can have a quarrel with the interpretation of Section 223(1). It is here that we have to take note of Section 531(2)a of BNSS. This comes under the “Repeals and Savings” clause of BNSS. By virtue of this provision, if any appeal, application, trial, inquiry or investigation is pending before the commencement of BNSS, then the BNSS itself directs that such appeal, application, inquiry or investigation should continue in accordance with the Code, 1973, and not in accordance with the BNSS. Section 531(2)(a) is extracted hereunder:

“(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, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force.”

19.A reading of this provision shows that in order to apply the Code, 1973, after coming into force of the BNSS 2023, the



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appeal, application, trial, inquiry or investigation should be pending. The emphasis is on the word 'pending'. If before 01.07.2024 the proceeding is pending, then by virtue of the words "as if this Sanhita had not come into force", the court will have to apply the Code of Criminal Procedure. As to the meaning of the word 'pending', it has been the subject matter of interpretation by a Constitution Bench of the Supreme Court in ***Asgarali Nazarali Singaporawalla v. State of Bombay, (1957) INSC 17.***

20.The Supreme Court, in that case, was dealing with an appeal from the order of the Bombay High Court setting aside the acquittal of the appellants by the court of Presidency Magistrate, Bombay. The Bombay High Court had ordered re-trial by the court of the Special Judge, Greater Bombay in accordance with the Criminal Law Amendment Act of 1952. The appellant, in that case, was the third accused before the Presidency Magistrate, Bombay. He, along with four others, were charged with offences under section 161 r/w 116, 109,114 of the Indian Penal Code.



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21.The charge was that they had offered a Sub-Inspector of Police attached to the Anti-Corruption Branch a sum of Rs.1,25,000/- as illegal gratification. The purpose of such payment was to show undue concession to a firm, M/s.M.M.Baxabhoy and Company of which the appellant was a receiver. The offence was alleged to have been committed on 28.07.1950. A charge sheet was filed on 16.06.1951. The trial commenced on 14.07.1951. Charges were framed on 27.09.1951. The prosecution was closed on 25.07.1952. Three days after the closure of prosecution, the Parliament enacted the Criminal Law Amendment Act of 1952. The purpose of this amendment was, *inter alia*, for speedy trial of offences relating to corruption.

22.The Government of Bombay issued a notification on 26.09.1952 appointing a Special Judge to try offences relating to Sections 161, 165 and 165A of the Indian Penal Code or Section 5(2) of the PC Act, 1947. On the very day the notification was issued, the defence concluded their arguments. Within three days, the Presidency Magistrate convicted accused 1 and 2 and acquitted the other accused.



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23.Two appeal were presented before the Bombay High Court; One at the instance of the accused No.2 and the other by the State aggrieved by the acquittal of the accused.

24.The State of Bombay urged that, on account of the Criminal Law Amendment Act of 1952, the Presidency Magistrate lost the jurisdiction to try the case and he ought to have transferred the case to the court of the Special Judge for Greater Bombay. Such a plea was raised on the ground that the Presidency Magistrate lacked jurisdiction to try the case, the order of acquittal would be without jurisdiction. Both the appeals were heard by a Division Bench of the Bombay High Court. The appeals were heard on the preliminary issue of jurisdiction, of the learned Magistrate, to try and decide the case.

25.The Bench came to a conclusion that the Presidency Magistrate had no jurisdiction to try the case, after the commencement of the Amendment Act and therefore, set aside the conviction of the second accused and the acquittal of the other accused. Consequently, it directed re-trial of the appellant and the other accused before the Special Judge.



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26. On an appeal by a special leave to the Supreme Court, leave was granted and heard by a Constitution Bench. Of the several issues that were presented, one of the issues was the interpretation of the word 'pending' before any Magistrate. The Supreme Court referred to the definition of the word 'pending' as laid down by Jessel, M.R in. ***In re, Clagett's Estate, Fordham v. Clagett, (1882) 20 Chancery Division 637 at p. 653*** which we extract hereunder:-

"What is the meaning of the word "pending"? In my opinion, it includes every insolvency in which any proceeding can by any possibility be taken. That I think is the meaning of the word "pending" ... A cause is said to be pending in a Court of justice when any proceeding can be taken in it. That is the test."

27. The Bench also referred to Stroud's Judicial Dictionary, 3rd Edition, Volume III, p.2141, which defined the word 'pending' as follows:-

"(1) A legal proceeding is "pending" as soon as commenced and until it is concluded i.e., so long as the court having original cognizance of it can make an order on the matter in issue, or to be dealt with, therein."



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28.Approving the principles set forth above, the court came to a conclusion, that the order of the Bombay High Court holding that any proceeding 'pending' before the Presidency Magistrate, ought to have been transferred to the Special Court is correct and consequently, dismissed the appeal.

29.Yet again, the word 'pending' came up for consideration in the case of **Lt. Col. S.K.Kashyap and another v. State of Rajasthan, (1971) 2 SCC 126**. After referring to the judgment in **Singaporawalla's** case, Chief Justice, A.N.Ray defined the word in the following terms:-

"the word 'pending' will ordinarily mean that the matter is not concluded and the court which has cognizance of it can make an order on the matter in issue. The test is whether any proceedings can be taken in the cause before the court or Tribunal where it is said to be pending. The answer is that until the case is concluded it is pending."

30.In this case, cognizance of the offence was taken by the learned Principal Sessions Judge on 14.08.2023. Hence, the



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proceedings have to be treated 'pending' at least from that date.

If the proceedings are pending, then it is the erstwhile Code of 1973 would be applicable and not the BNSS of 2023. Consequently, the question of applying Section 223 of BNSS of 2023 does not arise at all to the facts of this case.

31.Dr.Muralidhar had referred to several judgments which we will deal with immediately.

32.The first of the judgments he referred to is ***Kushal Kumar Agarwal v. Directorate of Enforcement, 2025 SCC Online SC 1221***. In that case, the complaint under section 44(1)(b) came to be filed on 02.08.2024, i.e., after the cut-off date of 01.07.2024 when the BNSS came into force. Obviously, on the date on which the complaint had been filed, there was no case pending before the learned Special Judge and hence, the Supreme Court directed compliance with Section 223 of BNSS. This is evident from paragraph 5 of the said judgment, where A.S.Oka, J. held that as the complaint had been filed after 01.07.2024, Section 223 of the BNSS would be applicable. Though Dr.S.Muralidhar referred to paragraph 7 on the question



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of taking cognizance, we should point out in paragraph 9, the Supreme Court did not deal with the issue, as it did not arise for consideration in the appeal.

33.The next judgment relied upon is ***Basanagouda R.Patil v. Shivananda S.Patil, 2024 SCC Online Kar 96***. The learned Judge had laid down as to how a court should deal with Section 223(1) of the BNSS. That was a case where the learned XLII Additional Chief Judicial Magistrate, Bangaluru had passed an order on 16.07.2024 issuing notice to the accused. A perusal of paragraph 7 makes it clear that the complaint itself was filed invoking Section 223 of the BNSS and it was not a case invoking Section 200 of the erstwhile Code. If the complaint is filed invoking BNSS, obviously the procedure laid down therein would have to be complied. The date of passing of the order shows that it was filed 15 days after coming into force of the BNSS, i.e., on 16.07.2024. Hence, it cannot be treated as one pending under Section 531(2)(a) of the BNSS.

34.The aforesaid logic holds good for the next judgment that was relied upon the petitioner, namely, ***Prateek Agarwal***



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v. State of Uttar Pradesh, 2024 SCC Online All 8212,

wherein a protest petition had been filed, in which the petitioner before the Allahabad High Court was arrayed as an accused on 15.10.2024. The learned Judge, after taking note of the view in **Basanagouda's** case, held BNSS applies and therefore, the proviso to Section 223 would have to be complied with.

35.The next judgment is **Sanjay Bandhe v. Ashwani Bandhe, 2024 SCC Online Chh 13745**. In this case, the first respondent before the Chattishgarh High Court had lodged an application under Section 156(3) of the Code against the petitioners and few respondents therein. The JFMC, Raipur called for a report from the concerned police station and after receipt of the report, rejected the petition filed by the first respondent.

36.Aggrieved by the same, the respondents preferred a revision before the learned IV Additional Sessions Judge, Raipur. The learned IV Additional Sessions Judge by an order dated 11.07.2024 set aside the order of the Magistrate dated 12.06.2023, rejecting the application filed by the first respondent



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and directed the Magistrate to proceed in accordance with Chapter XV of the Code. This order was challenged before the Chattishgarh High Court.

37.The High Court of Chattishgarh, came to a conclusion that as cognizance had not yet been taken by the Magistrate, there is no provision in the Code to hear the proposed accused. However, he took into consideration Section 223(1) of BNSS and directed the Magistrate to proceed as per that Section. The learned Judge in his direction did not render any specific finding on the applicability of BNSS on account of the fact that the order of the learned District Judge, proceedings stood restored to the file of the JFMC.

38.The next judgment is the case of **Suby Antony v. Judicial First-Class Magistrate-III and others, 2025 SCC Online Ker 532**. The issue presented in this case was the stage at which the Magistrate should hear the accused whether it was before taking cognizance or thereafter. The learned Judicial Magistrate, in that case, had issued notice to the accused even before examining the complainant and witnesses on oath. This



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order was interfered with, by the Kerala High Court, on the ground that the accused is entitled for notice, if the Magistrate decides to take cognizance of the offence and not immediately on presentation of the complaint.

39.In **Anil Kumar Yadav v. Directorate of Enforcement, Jammu, CRM(M).No.329 of 2025** dated 16.04.2025. The learned Judge was called upon to decide whether the date of filing of a complaint is a crucial date or whether the date of registration of ECIR is a crucial date. The learned Special Judge, Anti Corruption (CBI), Jammu had held that it is the date of offence, which is crucial to decide whether Code or BNSS will apply. This was set aside by the High Court of Jammu and Kashmir and Ladakh at Jammu holding that the date of commission of offence or registration of the FIR is not material for determining the applicability of BNSS, but the relevant factor for determining the applicability is the stage of the case prevailing immediately prior to 01.07.2024. In fact, this judgment instead of supporting the plea of Dr.S.Muralidhar helps only the respondent, since in paragraph 16, the learned Judge has held that if an enquiry or trial is pending, then it has to be concluded only under the Code.



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40.We have already pointed out that in this case, cognizance had been taken on 14.08.2023 and therefore, applying the judgment of Jammu High Court, the case should proceed only as per the Code.

41.The next judgment is ***Mohd Muzayyn v. State of U.P. and another, 2025:AHC:65284***. In this case, the offence had been committed on 15.03.2024, but the complaint came to be presented on 28.08.2024. On the very day, the Additional District and Sessions Judge, Saharanpur summoned the accused. The accused challenged the summoning of the order on the ground of violation of Section 223 of BNSS. I should point out that the learned Government Advocate, who appeared on behalf of the State of U.P., conceded that Section 223 is applicable and sought the matter to be remitted to the Court below. This case too, does not advance the case of the petitioner herein. As the complaint was lodged only on 28.08.2024, much after BNSS came into force.

42.Heavy reliance was placed upon the judgment in ***Tutu***



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Ghosh v. Enforcement Directorate, 2025 SCC Online Cal

5924. In that case, ECIR had been filed on 24th March 2023, cognizance had been taken by the learned Chief Judge, City Sessions Court at Calcutta acting in the capacity of Special Court under PMLA on 15.02.2025. Sabyasachi Bhattacharyya J., held that as BNSS is applicable to the facts of the case, necessarily the judgment in ***Kushal Kumar***'s case would apply and consequently, held that taking of cognizance on 15.02.2025 is a nullity. BNSS came into force on 01.07.2024 and since, cognizance was taken months thereafter, it was interfered with. Therefore, this verdict.

43.In ***Kaberi Dey and Others v. Sourav Bhattacharjee, 2025 SCC Online Cal 5928***, a private complaint, lodged before the Chief Judicial Magistrate at Jalpaiguri, was taken cognizance of on 13.09.2024. It was done so without notice to the accused as required under Section 223. As no matter was pending before the Magistrate prior to the cut-off date, the court necessarily had to apply Section 223 and come to the conclusion that the Magistrate ought to have taken into consideration the provision under Section 223 and thereafter, proceeded to hear the



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accused, before taking cognizance. As the facts of the case are totally different from the present one, this judgment also cannot be applied.

44.In ***Saji John and another v. Assistant Director Directorate of Enforcement, 2025 SCC Online Ker 5532***, though the offence had taken place much before the enforcement of BNSS, the complaint came to be lodged only after 01.07.2024. Cognizance was taken without notice on 27.03.2025 and consequently, applying Section 223, the order was set aside.

45.The same position prevails in ***Brand Protectors India Pvt. Ltd. v. Anil Kumar, 2025 SCC Online Del 5046***. The Magistrate took cognizance for the offence of defamation on 19.07.2024, after the coming into force of BNSS, without following the procedure under Section 223. On a revision being preferred to the learned Assistant Sessions Judge, Delhi, the learned Judge came to a conclusion that since cognizance had been taken after the coming into force of BNSS, the Magistrate erred in taking cognizance without issuing notice and hence, set aside the orders directed the learned Metropolitan Magistrate to



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hear the accused and thereafter, take cognizance, if necessary.

This order was put in challenge before the Delhi High Court and the same was confirmed, holding that Section 223 applied to the facts of the case.

46.I have already pointed out in the earlier paragraph that, since the case was pending before the learned Special Judge from 2023 onwards, the question of applying BNSS would not arise as Section 531(2)(a) would apply to the facts of the case. Hence, the order issuing summons to Accused Nos.2 to 13 by the learned Principal Sessions Judge cum Special Judge on 17.03.2025 cannot be found fault with for violation of Section 223(1) of BNSS and hence, stands rejected.

Reasoned order while taking cognizance

47.The next point that we will consider is the plea of Dr.Muralidhar, that the order taking cognizance is an unreasoned one, and does not reflect application of mind by the learned Special Judge.



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48.Dr.S.Muralidhar submitted that, summoning of an accused is a serious matter and the same should not be done in a mechanical manner.

49.The plea of the learned Additional Solicitor General that, the petitioner herein, cannot challenge the taking of cognizance on 14.08.2023 does not appeal to us. This is because, it was pursuant to the supplementary complaint filed invoking section 44(1) explanation 2, that has brought the petitioner before the Trial Court. If the original order is defective or contrary to law, a person arrayed as an accused is always entitled to bring it to the notice of the court and plead that the order taking cognizance being bad, all subsequent proceedings would have to fail. Hence, we will deal with Dr.S.Muralidhar arguments on “cognizance” herein.

50.Cognizance has its root in latin word '*cognoscere*'. The meaning of the word is "to know" or "to get to know". The French took note of this word and called it *conoissance*. Finally, when British brought their Codes, they called it as Cognizance. Despite the fullness of time, the basic meaning of this term has remained unchanged, i.e., “taking note of”, “taking account of” or



“to gain knowledge about”. In legal parlance cognizance means taking judicial notice by a Court of law, possessing jurisdiction, on a cause, or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially'. According to Black's Dictionary, 6th Edition, Pg.No.259: Cognizance means 'Judicial Notice or knowledge’.

51.This word 'cognizance' has come up for interpretation on several occasions before the Supreme Court. The earliest of them being, the famous case of ***R.R.Chari v. State of U.P., AIR 1951 SC 207***. Kania, CJ. held:-

“taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of offence.”

52.Chapter XV of the Code lays down the conditions requisite for initiation of proceedings. The very section in this Chapter is Section 190 of the Code. It stipulates in Section 190(1) (a) to (c), a Magistrate may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute



such offence;

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(b) upon a police report 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.

53.This Chapter deals with complaints to Magistrates. It has four sections running from 200 to 203. It has now been settled even for complaints under PMLA, these provisions apply. These sections deals with the examination of complainant, procedure by the Magistrate not competent to take cognizance of the case, postponement of issue of process and dismissal of complaint. This chapter is soon followed by chapter XVI which speaks about the commencement of the proceedings before Magistrates.

54.In this too, four sections are of importance. On receiving a complaint, a Magistrate applies his mind for the purpose of proceeding under Section 200 and other provisions of Chapter XV, then he is said to have taken cognizance of the offence within the meaning of Section 190. However instead of proceeding so, if the Magistrate, exercising his discretion, passes



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other orders that he is empowered to, such as, issue search warrant for the purpose of investigation or ordering investigation by the Police Officer under section 156(3) of the Code, it cannot be said to have taken cognizance of the offence. (See, ***D.Lakshminarayana v. V.Narayana, AIR 1976 SC 1672***).

55.It is the plea of Dr.Muralidhar that when cognizance was taken by the Magistrate against the original accused, he did not pass a detailed order. On survey of all the judgments of the Supreme Court pointed out, a Magistrate needs to apply his mind to the materials placed before him before taking cognizance. Yet, the courts have made a difference between the standard of proof, for application of mind with reference to cognizance based on a private complaint and the one based on a police report.

56.Dr.S.Muralidhar relied upon ***Pepsi Foods Limited and Another v. Special Judicial Magistrate and Others, (1998) 5 SCC 749*** (paragraph 28) to urge that the order of the Magistrate summoning the accused must reflect that he had applied his mind to the facts of the case, and the law applicable thereto. At



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this stage, we have to point out here, the matter in ***Pepsi Foods*** case arose on account of a private complaint lodged by the second respondent before the Supreme Court alleging that the accused were manufacturing, selling, distributing and marketing adulterated and harmful products. It was a private complaint invoking Section 200 of the Code.

57.A private complaint given under Section 190(1)(a) has to be differentiated from a complaint lodged by a public servant, purporting to act in the discharge of his official duties. In fact, the Code itself make a difference. Under Section 200 of the Code, in the case of private complaint, a Magistrate should examine the complainant on oath and witness if any present, and reduce the same to writing and get the same signed by the complainant or witnesses and thereafter sign the same. The Code has a proviso to that section. If a public servant files a complaint in discharge of his official duties, then the Magistrate need not examine the complainant and the witnesses. It is only in the case of former, have the courts called upon a Magistrate to record reasons. In the case of police report, a Magistrate is not required to record reasons for issuing the process. This is because, issuing summons to the accused is based upon the



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satisfaction of the Magistrate, considering the reports and other documents and after satisfying himself, that there is sufficient ground for proceeding further.

58.In the facts of this case, the Enforcement Directorate had conducted an investigation and had filed a complaint along with the materials. We have been given the order of the learned Special Judge taking the cognizance. He has recorded that on going through the materials, he is satisfied that, the complaint reveals offences alleged to have been committed under Sections 3 and 4 of the PMLA. This reflects that he had gone through the complaint and materials filed along with it, applied his mind and only thereafter, took cognizance and issued summons.

59.In cases, as the present one, the Magistrate has the advantage of the materials, and have been presented to him by the Enforcement Directorate, including the statements of witnesses and other evidences collected by them, during the course of investigation. The evidence and materials are examined at the level of the officials of the Enforcement Directorate carefully and thoroughly to find out, if it reveals the necessary ingredients of Sections 3 and 4 of the PMLA. At this stage itself,



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the Enforcement Directorate officer, who prepares the complaint would have acted as centrifuge and would have separated what is useful and relevant from what is not. Such an exercise does not precede a private complaint lodged by a person. It is only in such cases, that a Magistrate has to carefully go through the complaint and the evidence of the complainant, and the witnesses and thereafter, come to a conclusion that it is fit enough to be taking cognizance of. Comparison of such cases with the offences under PMLA, in our opinion, is entirely misplaced.

60.In fact, the same reasoning prevails with respect to the next judgment relied upon by Dr.S.Muralidhar in ***Birla Corporation Limited v. Adventz Investments and Holdings Limited and Others, (2019) 16 SCC 610***. The complaint filed by the appellant company against the respondents therein alleging offences attracting section 379, 403, 411, 120-B of the Indian Penal Code. After examination of the complainant, one Samir Ganguly and another witness, the Magistrate proceeded against all the accused and issued summons to them. Being a private complaint, the Supreme Court came to a conclusion that there



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was no indication in the order of the Magistrate as to application of mind and as to his satisfaction that the sufficient grounds are available for proceeding against the respondent accused.

61.At this juncture, we will refer to the judgment of the three judges of the Supreme Court in ***Pradeep S.Wodeyar v. State of Karnataka, (2021) 19 SCC 62***. This verdict analysed the entire law on the subject and came to a conclusion that it is only in cases of the private complaint by a person, it is obligatory on part of the Special Judge to pass a fully reasoned order. While in cases of complaints filed after investigation, it is not so obligatory, if it appears that the Special Judge has applied his mind to the materials placed before him.

62.The other judgment relied upon by Dr.S.Muralidhar in ***Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others, (2015) 12 SCC 420*** also arose of a private complaint. A perusal of the judgment shows that, a complaint had been filed by Khazir Mohammad Tunda before the Judicial Magistrate First Class, Srinagar on 03.04.2007 alleging defamation. The Magistrate had issued summons to the appellant without



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recording reasons. It was in those circumstances, following the judgment in **Pepsi Foods** case, the court came to a conclusion that the order issuing summon is bad. In fact, in that judgment too, the court distinguished Section 190(1)(a) of the Code from 190(1)(b) and 190(1)(c). Hence, this judgment too, does not come to the assistance of the petitioner herein, as the complaint in this case was filed after collecting materials, which were sifted by the officials of the Enforcement Directorate and presented to the Court.

63.The order dated 14.08.2023 shows that the learned Special Judge, after perusal of the complaint and records placed before it, was convinced that these materials are sufficient to take cognizance of offence under Sections 3 and 4 of the PMLA. This is in our view reflects judicial application of mind.

64.It is the plea of Dr.Muralidhar, that the Special Court did not pass a separate order taking cognizance against the petitioner herein. We should point out that the concept of taking second cognizance on a supplementary complaint is unknown. Cognizance is taken for the offence and not against the offender. We have already held that the order taking cognizance against



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Thiru.V.Senthil Balaji on 14.08.2023 is sound in law. It is oft repeated that the court takes cognizance of the offence and not the offender. For the fact that in the complaint initially filed, certain persons had been left out, does not mean the Enforcement Directorate is denuded of the power to file a supplementary complaint.

65.The officials of the Enforcement Directorate cannot be treated as 'police officers' as understood under the Code. Yet before they file a complaint, it is preceded by an investigation. Investigation has been defined under section 2(n)(a) of the PMLA. This is more or less *in pari materia* to the word 'investigation' defined under the Code. The proviso to section 44(1)(b) indicates that on the conclusion of investigation, if no offence is made out, a closure report should be filed before the Special Court. This is an indication that a complaint filed under Section 44 should be preceded by an investigation.

66.In such circumstances, a complaint filed by the Enforcement Directorate cannot be treated on par with a complaint filed under Section 190(1)(a) of the Code. It should be given the same status as a report filed by the police under



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Section 190(1)(b). The difference is this, in case of investigation by the police, it will result in filing of a charge sheet/challan/report. The result of an investigation under PMLA is a complaint under Section 44(1)(b) read with Section 200 of the Code. In at least two cases, the Supreme Court has held that a reasoned order need not be passed, when the complaint is lodged by a statutory authority. (See, **UP Pollution Control Board v. Mohan Meaking Ltd. and Others (2000) 3 SCC 745** and **Deputy Chief Controller of Imports and Exports v. Roshanlal Agarwal and others, AIR 2003 SC 1900**).

Sanction under Section 197 of CRPC

67.It has been urged by Dr.S.Muralidhar that, the complaint initiated against the petitioner should be quashed, as prior sanction under Section 197 of the Code had not been obtained by the respondent. He relied upon the following judgments to substantiate this case:

- (i) **Gurmeet Kaur v. Devender Gupta, (2025) 5 SCC 481;**
- (ii) **N.K. Ganguly v. CBI, (2016) 2 SCC 143;**
- (iii) **State of U.P. v. Paras Nath Singh, (2009) 6 SCC**



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372; and

(iv) ***P.K. Choudhury v. Commander, 48 Brtf (Gref), (2008) 13 SCC 229.***

68.Per contra Mr.A.R.L.Sundaresan, urged that such a sanction is not necessary as the offence of money laundering is an independent offence under Section 3 of PMLA, and it has no nexus with the routine discharge of any official functions. He pleads that the allegation against the petitioner is of having participated in a criminal conspiracy to facilitate a recruitment fraud and money laundering.

69.Mr.A.R.L.Sundaresan pleads that the petitioner was employed at Metropolitan Transport Corporation, Chennai. During the relevant period, since the Metropolitan Transport Corporation, being a subsidiary of the Tamil Nadu State Transport Corporation, which is a company established under Section 617 of the Companies Act, the petitioner cannot be treated as holding a post under the appropriate Government. He places reliance upon the following judgments:

(i) ***D.Devaraj v. Owais Sabeer Hussain (2020) 7 SCC***



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695; and

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(ii) ***Mohd. Hadi Raja v. State of Bihar and Another, AIR 1998 SC 1945.***

70.The purpose of Section 197 of the code is to provide protection to public servants from malicious and frivolous prosecution arising out of the acts performed by them in the course of their official duties. This was to ensure that a public servant performs his official duties and functions unhindered by the threat of any criminal proceedings. The statute attempts to balance the need for accountability, while at the same time, safeguarding the integrity of the public officials, while in discharge of their official duties.

71.To expand, the object is the protection of honest and sincere officers. Such protection came into Indian jurisprudence by virtue of Section 197 of Code, 1882, and was retained under the Code of 1973. A similar provision is also found under Section 218 of the BNSS. The only change that has been brought about by that Section is introduction of "deemed sanction". Under the new dispensation, if the Government does not take a decision on



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sanction within 120 days of having received the files, the sanction is deemed to have been granted. Obviously, such amendment under BNSS was made to ensure that there are no bureaucratic delay in prosecuting public servants.

72.A perusal of the judgments cited on both sides shows that, while an honest public servant is protected from frivolous or malicious prosecution, the protection is not absolute. There should be a reasonable connection between the act inviting prosecution and the official duty carried on by the public servant.

73.Mr.A.R.L.Sundaresan is right that in terms of the judgment in ***Mohd. Hadi Raja*** cited supra, the protection which the Section affords, will not be available to the officers of the Government Company or Public Sector Undertakings.

74.This is not a case where the petitioner was a Government servant and sent on deputation to the Metropolitan Transport Corporation. Unless and until, a person is removable by the Government, Section 197 would not apply. Employees of the Metropolitan Transport Corporation are not removable by the



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Government but by the concerned Management of the Corporation. Hence, the said Section would not apply to the petitioner in this case.

75. Apart from this, a survey of all the cases shows that there must be a reasonable connection between the acts alleged and the official duties carried out by a person. As opined by the Supreme Court in ***P.K. Pradhan v. State of Sikkim, (2001) 6 SCC 704***, if there is a reasonable nexus, it does not matter even if the act exists; what is strictly necessary for discharge of duties, as this issue can always be addressed when the trial proceeds on merits. The duty of the court, when the plea of sanction is raised, is to find out whether the act and that official duty are so inter-related, that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in nexus with the needs and requirements of the situation.

76. The allegation in this case is that the petitioner, in his capacity as a Deputy Manager of Metropolitan Transport Corporation, had instructed his subordinates to manipulate the



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selection process and provide appointment orders to the candidates, who paid money on the instructions of Thiru.V.Senthil Balaji. If, the complaint stopped only with this, we could have apply the recent judgment of the Supreme Court in the ***Directorate of Enforcement Etc. v. Bibhu Prasad Achary, 2024 INSC 843*** and ***P.K. Pradhan***'s case and held sanction under section 197 might have been required.

77.A perusal of the complaint shows that the accusation against Mr.Ganesan is that, he had received the 'proceeds of crime' from Thiru.V.Senthil Balaji, and kept the same in his house for safe custody. By no stretch of imagination can one conclude that the receipt of proceeds of crime by an officer is reasonably connected to the performance of his official duty. Whether Mr.Ganesan retained Rs.12.5 lakhs is a matter which has to be gone into only at the time of trial. The act alleged shows that the petitioner was involved in the process of concealment of proceeds of crime. This is not having any connection with his official duties. Hence, we are of the view that Section 197 of the Code is inapplicable. It is not a case of acts having been performed in nexus of official duty, but totally outside the scope of official duty. Therefore, the petitioner can be



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prosecuted without a sanction.

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78.Dr.S.Muralidhar referred to the G.O by which, sanction to prosecute had been obtained by the Commissioner of Police, Greater Chennai, in G.O.Ms.No.4D No.3, Transport (Department) dated 26.02.2021 in order to prosecute the petitioner under Section 13(2) of the PC Act. Hence, he pleaded that similar sanction ought to have been obtained under Section 197.

79.On this point, we should point out that for the Enforcement Directorate to seize jurisdiction, there should exist a predicate offence. Once the predicate offence exists and the Enforcement Directorate is able to cull out the proceeds of crime out of the predicate offence, then it can certainly launch a prosecution. The restrictions found under Section 19 of the PC Act preventing a court from taking cognizance of offences under Section 13(2) is not found under PMLA. Both the Acts apply in different spheres. There might be situations where public servant could be accused of an offence under the PC Act, but on investigation, the Enforcement Directorate can come to a conclusion that there are no proceeds of crime. The result of such an investigation would be a closure report under Section 44



(1) (b) of the PMLA.

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80.It is in those circumstances, that in ***Vijay Madanlal Choudhary and Others v. Union of India and Others, 2023 12 SCC 1***, the Supreme Court came to a conclusion that the PML is a stand alone offence and that without proceeds of crime, there cannot be any offence under PMLA. That does not mean the same trappings which apply to a offence under the PC Act would also apply for prosecution of an offence under PMLA. The Commissioner of Police had taken sanction as it is mandated under Section 19. As long as Section 19 has not been telescoped into PMLA, the Government Order cannot be read as a bar on the Enforcement Directorate to launch a prosecution without sanction under Section 197.

Cognizance qua offence or offender?

81.We now deal with the next submission of Dr.S.Muralidhar that cognizance is qua the offender and not the offence. It was urged that when cognizance was taken by the learned Special Judge on 14.08.2023, it was taken as against Thiru.V.Senthil Balaji and hence, when the supplementary



complaint was filed, there is no separate order taking cognizance with respect to the petitioner and other accused. This argument is two fold. The first one being that under the proviso to Section 223(1) of the BNSS ensures that each of the proposed accused should be afforded an opportunity of hearing before cognizance is taken and therefore, the court should apply its mind as regards the role and allegations specific to that individual and secondly, while taking cognizance the court takes the same against the offender and not the offence. Relying upon the following judgments in

(i) **Prasad Shrikant Purohit v. State of Maharashtra and Another, (2015) 7 SCC 440;**

(ii) **Dilawar Singh v. Parvinder Singh and Another, (2005) 12 SCC 709;** and

(iii) **N. Harihara Krishnan v. J. Thomas, (2018) 13 SCC 663,**

Dr.S.Muralidhar argued that it is legally recognised that in certain cases, cognizance taken on the offender and not of the offence.

82.Mr.A.R.L.Sundaresan rejecting this argument stated that the settled position of law is that cognizance is always taken



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against the offence and not the offender. He points out that the petitioner is weighingly attempting to rely upon cases under the PC Act and NI Act. Considering the scope of those legislations, it cannot be compared to the PMLA.

83.Once a competent court takes cognizance of an offence, it cannot take fresh or second cognizance on the same facts and materials. This is because, the fundamental rule is cognizance can be taken only once for the given offence for the said facts. In case, the court were to take “re-cognizance”, it is considered as bad in law. The Magistrate once takes cognizance and issues process, he or she cannot thereafter recall or review the said order. This is because, the Code does not provide for review of an order (See, Section 362 of the Code).

84.If the initial order taking cognizance is wrong, then the appropriate remedy for an aggrieved party is to challenge the same in a higher forum. Even a complainant, whose complaint is not taken cognizance of, cannot file a fresh complaint before the same court or a court of co-ordinate jurisdiction. This is because, entertaining second complaint on the same set of



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allegations is considered as abuse of process of court.

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85.The initial phase of judicial process under the Code is whether the facts presented before the Court discloses a crime has been committed, and not whether a specific individual has committed it. For the purpose of initiation of legal proceedings under the Code, the existence of an offence is pre-requisite. The identity of the accused is determined as the case progresses.

86.If the interpretation of Dr.S.Muralidhar is to be accepted, then a court cannot initiate proceedings if a specific offender is not named or is not known at that time. We can visualise the situation where suspects are absconding or it is an on going investigation. The purpose of giving the power to a Magistrate to take cognizance of an offence, is to ensure a check by the Judiciary on the police powers. The police may file a report saying no offence has been committed. Yet, the Magistrate can disagree with the same, and still take cognizance of it, if the Magistrate finds *prima facie* case is made out, upon applying his or her independent mind to the facts that are presented in the report.



87.Once the court takes cognizance of an offence, finding the people involved in the crime is the next step. It need not be suggested that, those individuals are named in the police report or the complaint. The Code has several provisions enabling the Magistrate to summon additional accused, if the material on record suggests their involvement. To give an example, it is Section 319 of the Code.

88.In order for the court to seize jurisdiction with respect to the facts brought before it, Section 190(a) to 190(c) of the Code, substratum or base of the entire case is “offence alleged”. Once the court has seized jurisdiction, it is at the next stage that it proceeds to identify and prosecute the offender. Therefore, the plea of Dr.S.Muralidhar that the court should take cognizance of the offender and not the offence is, in our view, erroneous.

89.We have already concluded that there cannot be two sets of procedure, one for Thiru.V.Senthil Balaji and another for the additional accused. We have already pointed out that, by virtue of Section 531(2)(a) of the BNSS, 2023, procedure that will be applicable to this case is the Code of 1973. Once we come to this conclusion, we do not find any necessity, in this case, to venture into the discussion whether the court by virtue of



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Section 223 of the BNSS takes cognizance of the offender and not the offence.

90.We now deal with authorities relied upon by the respective parties.

91.The first of the cases relied upon is **Prasad Shrikant Purohit**'s case. Dr.S.Muralidhar referred to paragraph 70 of the said judgment. It was urged before the Supreme Court in that case placing reliance upon **Dilawar Singh**'s case that, cognizance should be taken for the offender and not the offence. We should immediately point out here that **Dilawar Singh**'s case arose out of the prosecution under the PC Act. **Dilawar Singh**'s case itself points out that PC Act is a special statute, and by virtue of the special provision made under that statute, the general provisions stand excluded. The Supreme Court, in **Dilawar Singh**'s case, further held that under the provisions of PC Act, 1988, the Special Court cannot summon another person in the exercise of Section 319 of the Code, if no sanction had been granted. This is because, the court had held that without a sanction, a Special Court under the PC Act cannot take



cognizance of the offence. It was in those circumstances that the court came to a conclusion that cognizance is taken on the offender and not the offence.

92.**Prasad Shrikant Purohit's** case, instead of going in favour of the argument of Dr.SMuralidhar, supports the case of the Directorate of Enforcement. In placitum (b) at page 482 (SCC reports), Mr.Justice F.M.Ibrahim Kalifullah specifically held that, unless and until a restriction as found under Section 13(2) and 19 of the PC Act, cognizance is taken of the offence and not the offender. On this principle, he concluded that since the Maharashtra Control of Organised Crime Act of 1999 does not have a similar stipulation, the judgment in **Dilawar Singh's** case cannot be mechanically extended to the facts of that case. In paragraph 71 at placitum (f), he concludes that cognizance is mainly of the offence and not the offender.

93.The next judgment relied upon by Dr.S.Muralidhar is **Dilawar Singh's** case. As already pointed out, that was a case which dealt with the interplay between Section 19(1) and Section 13(2) of the PC Act. The Supreme Court has already pointed out that if a statute does not have a provision like Section 19, the



regular principle that cognizance is taken on the offence and not the offender will apply. Hence, the principles governing PC Act cannot be extended to the facts of the present case.

94.The next judgment relied upon by Dr.Muralidhar is **N.Harihara Krishnan**, cited supra. He relied upon paragraphs 20, 23 and 27 of the said judgment. We should point out here that as in the case of PC Act, under section 142 of the NI Act, the provisions start with a non-obstante clause. Jasti Chelameswar,J. in paragraph 26 of the said judgment, concluded that the scheme of prosecution under the NI Act is totally different from that of the scheme of the Code. He points out that, unless and until, a complaint inviting an offence under Section 138 of the NI Act complies with the requirements as he has set forth in placitum (d) to (f) of paragraph 26, an offence has not been made out. He further points out that, the first ingredient for constituting an offence is the fact, that the person draws a cheque. Hence, the identity of the drawer of the cheque is required to be disclosed. It was in those circumstances, he came to the conclusion that the offence under Section 139 is person specific and not the offence specific. This judgment too, does not help the petitioner on account of the special nature of



prosecution of offences under the NI Act.

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95.The next judgment is ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and Others, (2015) 3 SCC 123.*** Dr.Muralidhar placed reliance on paragraph No.15 of the said verdict. This judgment too arose under the PC Act. It was a case where two persons, namely, Sub-Divisional Magistrate and Sub-Divisional Officer were accused of offence under section 7, 12, 13(1)(d) read with 13(2) of PC Act. The complaint had been lodged by Mr.Phalke alleging that the Sub-Divisional Officer demanded money for issuance of a non-agricultural land certificate. On the complaint being lodged, vigilance wing arranged for trap. They fixed a voice recorder on the complainant. The idea being that the conversation between the complainant and the accused officers be recorded.

96.The trap was arranged at the office of SDO and SDM. SDO demanded bribe and it was handed over. The conversation that took place between the complainant, SDO and his clerk was recorded. It was also alleged that the conversation between the SDM and SDO was also recorded. The Police, after investigation, decided not to proceed against the SDM, since there was no



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offence made out against him. The police decided to proceed against the clerk and the SDO. When this report was presented to the Magistrate, he came to the conclusion that the proceeding against the SDM be closed and be treated as discharged, as there was absolutely no evidence of demand and acceptance by him.

97. On a revision to the High Court, the order of the Magistrate was set aside and the Director General of Police was called upon to forward the request of prosecution against the SDM to the competent authority. Challenging the same, a Special Leave Petition was preferred to the Supreme Court. The Supreme Court held that the Magistrate had gone through the entire records and passed a reasoned order that he did not find the necessary facts to take cognizance against the SDM. It also pointed out that, it is not the innocence of the accused, but the involvement of the accused that is material at the stage of Section 190 (1)(b) of the Code. It concluded that once the prosecution is of the view that no case is made out to prosecute the accused, unless the court find otherwise. It was in those circumstances, the court held that once the legal requirements to constitute the alleged offence qua one of the accused is



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lacking, there is no point in taking cognizance and proceeding further.

98.We went detail into the facts of the aforesaid case to point out that factually, the prosecuting agency did not find any offence being made out against the appellant and neither did the court find the material sufficient to reject the final report and proceed against Mr.Chavan. The Supreme Court came down heavily on the High Court stating that, it had exceeded the jurisdiction by substituting the views of the prosecuting agency and the Magistrate without any legal basis. The observation in paragraph 15 cannot be divested from the facts of that case.

99.The next judgment relied upon by Dr.S.Muralidhar is ***State of Punjab v. Devans Modern Brewaries Limited and Others, (2004) 11 SCC 26***. He relied upon paragraphs 355 and 356 in the said judgment. It dealt with the scope of law of precedents that a judgment of a higher court is binding on the lower courts having similar bench structure. These two paragraphs reiterated the principle of *stare decisis* that consistency and predictability in a legal system require lower courts to adhere to the rulings of the higher courts within the



same jurisdiction.

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100.At the same time, we also recollect the judgment of a Constitution Bench of the Supreme Court in ***Padmasundara Rao and Others v. State of Tamil Nadu and Others, (2002) 3 SCC 533***. Mr.Justice Arijit Pasayat, speaking for the bench, held that courts should not place reliance on decisions without discussing as to how the factual situation of the cited case applies to the facts of the case under consideration. The Supreme Court cautioned that there is always a peril in treating the words of a judgment as though they were words in a legislative enactment. It reminded judges that judicial utterances are made in the setting of the facts of a particular case and that circumstantial flexibility, one additional or different fact, may make a world of difference between the conclusions in two cases.

101.While we are conscious of the position on the law of precedents, we have to point out that, we are not in a position to apply judgments, which have been rendered in legal and factual settings under the PC Act and NI Act to the present case. Hence, on this point, we conclude that as there is no bar in the PMLA or in the Code, as found under the NI Act or the PC Act, the general



principle that cognizance is taken for the offence and not the offender continues under PMLA.

Further Investigation – Fresh Materials

102. The next submission we have to deal is on the lack of any fresh material. The plea of Dr.S.Muralidhar that in the lack of fresh material, the court cannot receive a subsequent complaint under PMLA.

103. The provision relating to offences triable by the Special Court is Section 44 of the PMLA. The said provision reads as follows:

“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



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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 moneylaundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or

(c) ...

(d) ...

(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.

104. Section 44 has been amended on more than one occasion, namely, by Act 20 of 2005, which excluded the words "upon perusal of a police report of the facts which constitute an



offence under this Act or in section 44(1)(b). Section 44(1)(a) and 44(1)(b) were again amended by the Act 2 of 2013. For the purpose of this case, we will be referring to explanation to Section 44(1)(d) which was brought in by way of an Amending Act 23 of 2019.

105. We should note that Section 44 commences with a non obstante clause.

106. What is the effect of non obstante clause?

A non-obstante clause is a tool developed by the legislature to give overriding effect to a particular provision over conflicting or contrary provisions found in the same statute or elsewhere. The normal usage of a non-obstante clause is notwithstanding. A non-obstante clause may also begin with the words "in spite of", "anything to the contrary", etc. A non-obstante clause is an abbreviation of the Latin maxim "*non obstante aliquo statuto contrarium*" which roughly translates in English as "notwithstanding any statute to the contrary".

107. The purpose of such a clause, is to give an overriding effect to a specific provision over other potentially conflicting



laws. The fundamental effect is to give that provision absolute and unqualified power, ensuring that it takes precedent over any other provisions. The Parliament, while inserting this clause in Section 44, has given a signal to the Court, that it has deliberately directed this section applies regardless of the Code. This ensures that the ambiguity that can be raised by a party facing a prosecution under PMLA vanishes.

108.Dr.S.Muralidhar referred to Section 173(8) of the Code to point out that further investigation ought to be ordered only when the fresh materials against an accused are made available. By virtue of Section 44(1) read with Section 65, we are not in a position to telescope the entire provisions of the Code relating to further investigation into PMLA.

109.A perusal of Section 65 of PMLA makes it clear that the provisions of the Code are applicable to arrest, search, seizure, attachment, confiscation, investigation, prosecution and all other proceedings under PMLA, insofar as they are not inconsistent with the provisions of the PMLA. The word 'all other proceedings' found under Section 65 would obviously include a complaint lodged under Section 44 or any supplementary



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complaint under the said Section of the PMLA.

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110.In fact, even under the Code as it existed, the Supreme Court in ***Ram Lal Narang v. State (Delhi Administration) (1979) 2 SCC 322*** affirmed the settled position that the police have the right to investigate an offence, even after submitting a report under Section 173. This right continues even after the Magistrate takes cognizance of the case. The court pointed out that Section 173 of the Code does not bar the police from investigating further for the mere fact that the cognizance has been taken. They arrived at this conclusion because it is finally the Magistrate, who has the final discretion to decide on the course of action that he or she has to adopt when fresh facts are brought forth before the Court.

111.By this judicial supervision, it effectively prevents any abuse at the hands of the police. This being the position even with respect to the code, a larger leeway has to be given to the authorities under the PMLA, as Section 44 commences with a non obstante clause.



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112.It is the plea of Dr.S.Muralidhar that whatever facts that were available with the Enforcement directorate on the date of presentation of the initial complaint, were sufficient to launch a prosecution against the petitioner. Yet, they did not do so. He took us through the supplementary complaint to point out that, insofar as the petitioner is concerned, statements had been taken on 01.03.2022, 07.03.2022 and 11.08.2023, all before the initial complaint filed in C.C.No.9 of 2023 against Thiru.V.Senthil Balaji. He states that, as no further investigation could have been done, the complaint against Ganesan has to fail.

113.Section 44(1)(d) has explanations appended to it. The second explanation states that the complaint filed before the Special Court is deemed to include any subsequent complaint in respect of further investigation, which may be conducted to bring further evidence, oral or documentary, against any accused person, whether named in the original complaint or not. Even before the amendment, the High Courts have relied upon the Code to hold that a subsequent complaint is tenable (See, ***Yogesh Mittal v. Enforcement Directorate, (2018) 248 DLT***



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630 (para 22), and ***Amit Banerjee v. Manoj Kumar, (2016) 2***

CHN 523 (para 22 and 23)).

114.The Parliament, perhaps taking note of these judgments, has declared by a clarification that the original complaint will deem to include an subsequent complaint against any person accused of an offence, whether named in the original complaint or not. The clarification begins with the words for the removal of doubts. This clause has been brought in to make explicit the goal that is sought to be achieved and to ensure that there is no doubt or ambiguity. This leaves the court hardly any room to take any alternative interpretation. Hence, we are of the view that the supplementary complaint filed by the Enforcement Directorate on 08.01.2025 has to be deemed as a part of the original complaint filed against Thiru.V.Senthil Balaji in 2023.

115.In addition, we have gone through the complaint and are able to perceive that the Enforcement Directorate had continued the investigation, even after lodging the complaint and has obtained certain materials thereafter, which constrained it to file an additional complaint against a fresh set of persons, who have not been originally named in the complaint. Section



44(1)(d), explanation 2, must not be looked at isolation. The other amendments brought in the PMLA by the Finance Act of 2019 would also have to be looked into.

116.The explanation appended to Section 2(u) clarifies that, the “proceeds of crime” relating to any property are directly or indirectly derived through any activity relatable to the scheduled offence. Similarly, the scope of Section 3 has been further explained by bringing in clauses relating to concealment, possession, acquisition, and use, projecting it as untainted property and claiming that it is untainted property in any manner whatsoever. These amendments not only clarify the power of the Enforcement Directorate but has also ensure that, if the Enforcement Directorate comes to the conclusion that no offences is made out, it is entitled to file a closure report (See, proviso to Section 44(1)(b) of the PMLA). This discussion leads us to the conclusion that the further investigation carried on by the Enforcement Directorate should relate to the offence of money laundering and not with respect to any one person, who is now accused of having indulged in the said act.

117.After we had reserved orders, a Coordinate Bench had



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an opportunity to deal with similar submissions. That Bench too arrived at the same conclusion as we have. We respectfully agree with the same. (See, Rahul Surana Vs. The Assistant Director, Cr1.R.C.No.1541 of 2025, dated 19.11.2025, Per S.M.SUBRAMANIAM and MOHAMMED SHAFFIQ, JJ)

118.As we have not agreed with any of the submissions made by the petitioner, we have no hesitation that this petition lacks merits.

119.In the light of the above discussion, we are of the view that the Criminal Original Petition lacks merits. Consequently, Cr1.O.P.is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

(M.S.R., J)

(V.L.N., J)

08.12.2025

krk/nl

Index : Yes

Internet : Yes

Neutral Citation : Yes

Speaking Order : Yes

To

1.The Deputy Director,

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Directorate of Enforcement,
Ministry of Finance, Chennai Zonal Office-II,
B-Wing, Shastri Bhawan,
Haddows Road, Chennai – 600 006.

M.S.RAMESH, J.

and

V.LAKSHMINARAYANAN, J.

krk/nl

2.The Public Prosecutor,
High Court, Madras.

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08.12.2025