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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.REV.P. 1243/2024 & CRL.M.A. 32464/2024 INTERIM RELIEF
OMKARA ASSET RECONSTRUCTION PVT LTD

.....Petitioner

Through: Mr. Ashish Batra, Adv.

versus

DIRECTORATE OF ENFORCEMENT

.....Respondent

Through: Mr. Anupam S. Sharma, SC

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER
13.08.2025

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1. The present Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”) seeks to set aside the impugned Order taking cognizance dated 25.09.2024 and the consequent Order dated 25.09.2024 issuing process qua the petitioner, passed by the Court of ASJ-03, Central District, Tis Hazari Court, New Delhi in Ct. Case No. 1/2024 titled “*Directorate of Enforcement vs M/s Sunstar Overseas Ltd & Ors*” arising out of ECIR/GNZO/09/2021 dated 09.04.2021.

2. Learned senior counsel for the petitioner submitted that, in terms of the Ministry of Home Affairs notification dated 23.02.2024, the BNSS came into force on 01.07.2024, and since the Prosecution Complaint in the present case was filed on 29.08.2024, cognizance thereof must be governed by BNSS provisions rather than the CrPC, 1973. The Enforcement Directorate’s Prosecution Complaint is not a final report under Section 193(3) BNSS but squarely falls within the ambit of Section 223 BNSS.



3. It is further submitted that Section 531 BNSS, being a saving clause, applies only to pending investigations, appeals, trials, or inquiries as of 01.07.2024, and not to fresh complaints filed thereafter. It is also relevant that the petitioner's arrest and remand occurred after 01.07.2024, further confirming the applicability of BNSS.

4. Mr. Zoheb Hossain, learned special counsel for the ED/respondent submits that on law what has been submitted in respect of the applicability of the ratio of judgment in ***Kushal Kumar Agarwal v. ED, 2025 SCC OnLine SC 1221*** of the Supreme Court is not doubted. He also submits that since the complaint was filed by the Enforcement Directorate subsequent to 01.07.2024 when the BNSS, 2023 came into effect, the present petition may be disposed of in terms of the judgment of the Supreme Court in ***Kushal Kumar Agarwal*** (supra). However, he requests that the pending bail application, if any, filed on behalf of the petitioner be considered on its own merits.

5. In the present case, the prosecution complaint was filed on 29.08.2024. BNSS, 2023 came into force on 01.07.2024. The Supreme Court in the case of ***Yash Tuteja Vs. Union of India, 2024 SCC Online SC 533*** and ***Tarsem Lal Vs. Enforcement Directorate, (2024) 7 SCC 61***, has taken the view that a complaint filed by the Enforcement Directorate under Section 44 (1) (b) of the PMLA will be governed by Section 200 to 204 of the Cr.PC. Thus, Section 223 of the BNSS, which corresponds to Section 200 Cr.PC, will also apply to a complaint under Section 44 of the PMLA, filed after 01.07.2024. Section 223, BNSS reads as under:-

“Section 223. Examination of complainant.

(1) A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to



writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless—

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.”

6. Section 223 provides an added safeguard that no cognizance shall be taken without affording the accused an opportunity of being heard. In ***Kushal Kumar Agarwal*** (supra), the Supreme Court held that since the PMLA complaint was filed after 1 July 2024, Section 223 BNSS shall apply, mandating an opportunity of hearing to the accused before cognizance. As the Special Judge failed to provide such hearing, the impugned order was set aside solely on this ground, without touching the merits of the case. The relevant paras are extracted herein;

“6. The proviso to sub-section (1) of Section 223 puts an embargo on the power of the Court to take cognizance by providing that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.

7. In this case, admittedly, an opportunity of being heard was not given by the learned Special Judge to the appellant before taking cognizance of the



offence on the complaint. Only on that ground, the impugned order dated 20th April, 2024, will have to be set aside.

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10. The impugned order dated 20th November, 2024, is set aside only on the ground of non-compliance with the proviso to sub-section (1) of Section 223 of the BNSS.”

7. In view of the above, this Court is of the considered opinion that the impugned Order dated 25.09.2024 issuing process qua the petitioner, passed by the Court of ASJ-03, Central District, Tis Hazari Court, New Delhi in CC No. 1/2024 titled “*Directorate of Enforcement vs M/s Sunstar Overseas Ltd & Ors*” arising out of ECIR/GNZO/09/2021 dated 09.04.2021 cannot be sustained, as it fails to appreciate the applicability of Section 223 of the BNSS, 2023, to a prosecution complaint filed under the Prevention of Money Laundering Act, 2002, in light of Section 65 of the PMLA and the law laid down by the Supreme Court in ***Kushal Kumar Agarwal*** (supra).

8. Accordingly, the present petition is allowed. The impugned order dated 25.09.2024 is set aside. The Trial Court is directed to afford the petitioner an opportunity to be heard before taking cognizance in terms of the proviso to Section 223 BNSS, 2023, and to proceed thereafter in accordance with law.

9. However, it is clarified that bail applications, if any, moved by the petitioners in the trial court shall be decided on its own merits.

10. The petition alongwith any pending application(s) is disposed of.

RAVINDER DUDEJA, J

AUGUST 13, 2025/na/Ak