IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.3728 of 2025
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1. Gyaan Chandra Jaiswal, aged about 56 years, Son of Shyamlal Shaw, resident of At 3-B, 3rd Floor, Jyoti Apartment, Contractors Area, Road No.2, Bistupur, P.O. and P.S. Bistupur, Town Jamshedpur, District East Singhbhum (Jharkhand) – 831001
2. Raaj Jaiswal, aged about 34 years, Son of Gyaan Chandra Jaiswal, resident of At 3-B, 3rd Floor, Jyoti Apartment, Contractors Area Road No.2, Bistupur, P.O. and P.S. Bistupur, Town Jamshedpur, District East Singhbhum, (Jharkhand) – 831001

… Petitioners

Versus

1. Union of India represented by Shri Dinesh Kumar, son of not known, Intelligence Officer, Directorate General of GST Intelligence, Regional Unit, Jamshedpur, 2nd/3rd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakchi, P.O. and P.S. Sakchi, Town Jamshedpur, District East Singhbhum (Jharkhand) – 831001
2. Senior Intelligence Officer, Directorate General of GST Intelligence, 2nd/3rd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakchi, P.O. and P.S. Sakchi, Town Jamshedpur, District East Singhbhum (Jharkhand) - 831001

… Opposite Parties

For the Petitioners : Mr. Anil Kumar, Sr. Advocate
Mr. Sahil, Advocate

Mr. Siddhant Singh, Advocate
For the Opp. Parties : Mr. Parth S.A.S. Pati, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:-

I.A. No. 15961 of 2026

1. Heard the parties.

2. Learned senior counsel for the petitioners submits that this interlocutory application has been filed for early hearing of this Criminal Miscellaneous Petition.

3. Since the hearing of this Criminal Miscellaneous Petition is being taken up today, hence, this interlocutory application is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

Cr.M.P. No.3728 of 2025

1. Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with the prayer to quash the entire criminal proceedings including the order taking cognizance dated 23.08.2024 passed by the learned Special Judge, Economic Offences, East Singhbhum, Jamshedpur in Complaint Case No. 2360 of 2024 whereby and where under the learned court has taken cognizance of the offences punishable under Section 132(1)(i) of the CGST Act, 2017 as well as the

offences punishable under Sections 201 (Part-3), 204, 420, 465, 467, 468, 471 & 120B of the Indian Penal Code in connection with the said case.

3. The undisputed fact remains that the complaint was filed on 25.06.2024 in the court of Special Magistrate, Economic Offences, East Singhbhum, Jamshedpur. On that date, the Code of Criminal Procedure was in force. By the time, the cognizance of the offences was taken on 23.08.2024, the Bharatiya Nagarik Suraksha Sanhita, 2023 came in force.

4. Learned senior counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Parvinder Singh vs. Directorate of Enforcement** reported in **2026 SCC OnLine SC 903,** para-37 & 38 of which reads as under:-

> *"37. As already discussed, though the complaint under the PMLA was filed earlier, the cognizance was only taken subsequently, on 02.07.2024, by which time the BNSS had come into force. Admittedly, the appellant has not been heard at the time of taking cognizance. The mandate of a legislation which ensures the right of an accused to a fair trial, whose liberty is at stake, cannot be dispensed with. Thus, the contention of the learned ASG that prejudice caused due to non-hearing at the stage of cognizance will have to be shown by the accused cannot be accepted, as it is not a mere irregularity that would attract either Section 506 or 511 of the BNSS, but is an illegality that would vitiate the very proceedings.*
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> *38. Based on the above discussion, the views expressed by the High Court are, therefore, liable to be set aside. We do find that the allegations against the appellant are quite serious. However, non-compliance with the first proviso to Section 223(1) of the BNSS vitiates the very order taking cognizance, and the same cannot be sustained in the eyes of the law. In fact, the appellant has, at the earliest point in time, filed the application for recall of the order taking cognizance by placing reliance upon the said proviso. Had the Special Court allowed it, the trial would have proceeded further. Suffice it to state that the appellant cannot be faulted for any delay that has occasioned. (Emphasis Supplied)"*

and submits that since the learned Special Magistrate did not adhere to the first proviso of Section 223(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 which debars any cognizance of the offences being taken without giving the accused an opportunity of being heard, hence, the same is not sustainable in law.

5. In this respect, the learned senior counsel for the petitioners also relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Kushal Kumar Agarwal vs. Directorate of Enforcement** reported in **2025 SCC OnLine SC 1221,** para-6 of which reads as under:-

> *"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. (Emphasis Supplied)"*

6. Learned senior counsel for the petitioners further submits that in para-17 of the petition, it has categorically been mentioned that the mandatory opportunity of hearing as envisaged under the first proviso of Section 223(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 was not provided to the petitioners and the same has remained uncontroverted. Hence, it is submitted that the prayer as prayed for in this Criminal Miscellaneous Petition be allowed.

7. Learned counsel appearing for the opposite parties on the other hand vehemently opposes the prayer of the petitioners made in this Criminal Miscellaneous Petition but fairly submits that no opportunity of hearing under the first proviso of Section 223(1) of the Bharatiya

Nagarik Suraksha Sanhita, 2023 was given to the petitioners before taking cognizance.

8. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, this Court has no hesitation in holding that since by 23.08.2024, Bharatiya Nagarik Suraksha Sanhita, 2023 came into force, hence, it was incumbent upon the learned Special Magistrate, Economic Offences, East Singhbhum, Jamshedpur to comply the first proviso of Section 223(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 by giving the petitioners an opportunity of being heard before taking cognizance but having not done so, the order dated 23.08.2024 passed by the learned Special Judge, Economic Offences, East Singhbhum, Jamshedpur in Complaint Case No. 2360 of 2024 is not sustainable in law. Therefore, the order taking cognizance dated 23.08.2024 passed by the learned Special Judge, Economic Offences, East Singhbhum, Jamshedpur in Complaint Case No. 2360 of 2024 be quashed and set aside.

9. Accordingly, the order taking cognizance dated 23.08.2024 passed by the learned Special Judge, Economic Offences, East Singhbhum, Jamshedpur in Complaint Case No. 2360 of 2024 is quashed and set aside.

10. Complaint Case No. 2360 of 2024 is remitted to the court of learned Special Magistrate, Economic Offences, East Singhbhum, Jamshedpur to pass a fresh order in accordance with law after

complying the first proviso of Section 223(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

11. In the result, this Criminal Miscellaneous Petition is allowed to the aforesaid extent only.

12. In view of disposal of the instant Criminal Miscellaneous Petition, pending I.A. No. 16976 of 2025 stands disposed of being infructuous.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 19th of November, 2026
AFR/ Saroj

Uploaded on 20/11/2026