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Crl.O.P. Nos.26053 and 26056 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.06.2026

DELIVERED ON: 05.06.2026

CORAM:

THE HONOURABLE MR.JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P. No.26053 of 2025 and Crl.M.P. No.17689 of 2025
and
Crl.O.P. No.26056 of 2025 and Crl.M.P. No.17691 of 2025

B. Siva
Son of Boopathi
Proprietor of Pachaivazhi Amman Traders
residing at 269, Main Road A.K.
Kuchippalayam
Arasamangalam
Villupuram Taluk
Kallipattu
Villupuram 605 105

Petitioner in Crl.O.P. No.26053/2025

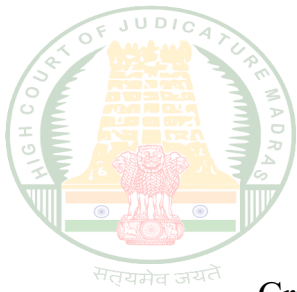
Rathinasababathy Palanivelu
Son of Rathinasababathy
Proprietor
M/s. Lotus Bottle Suppliers
residing at
No.46, Solaikrishnan Street
Janaki Nagar
Valarasaravakkam
Chennai 600 087

Petitioner in Crl.O.P. No.26056/2025

vs.

The Deputy Commissioner of Income Tax
Central Circle – 2 (2)
Room No.B-4, Ground Floor
Income Tax Investigation Building
No.46, M.G. Road
Nungambakkam
Chennai 600 034

Respondent in both Crl.O.Ps.



Crl.O.P. Nos.26053 and 26056 of 2025

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Criminal Original Petitions filed under Section 528 of the BNSS, 2023 to set aside the order taking cognizance dated 20.02.2025 in E.O.C.C. No.3 of 2025 and E.O.C.C.No.2 of 2025 respectively on the file of the Additional Chief Metropolitan Magistrate, EO-I, Egmore, Chennai.

For petitioner in both Crl.O.Ps. Mr. Abudukumar Rajaratnam, Sr. Counsel for Mr. K.R. Ramesh Kumar

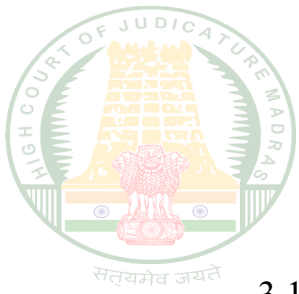
For respondent in both Crl.O.Ps. Ms.M.Sheela, Sr. Standing Counsel (I.T.Dept.) assisted by Mr. H. Siddarth Jr. Standing Counsel (I.T. Dept.)

COMMON ORDER

The legality and validity of two separate adjudications, both dated 20.02.2025, made in E.O.C.C. Nos.3 of 2025 and 2 of 2025 respectively, on the file of the Court of Additional Chief Metropolitan Magistrate (Economic Offences-1), Egmore, Chennai – 8 (for short “the Trial Court”), are called into question in these two criminal original petitions.

2. For the sake of clarity and convenience, the petitioners and the respondent will be referred to as accused and complainant respectively.

3. A vignette of the facts leading to the institution of these two criminal original petitions would suffice:

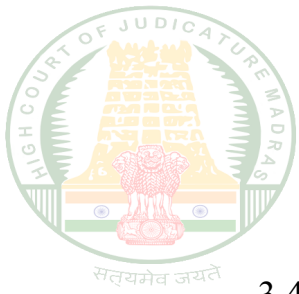


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3.1 From the search conducted by the complainant in respect of one Southern Agrifurane Industries Pvt. Ltd. at Myalpore, Chennai, it came to light that the said assessee had inflated their bottle purchases by obtaining bogus invoices of various firms and two such firms were the accused. The *modus operandi* that was found out by the complainant was that after receipt of payment, the accused returned the corresponding amount by cash after deducting their commission for providing bogus bills.

3.2 Hence, the complainant conducted a search on the accused on 15.06.2022 and after complying with the other required formalities as required under the Income Tax Act, 1961, (for short “the IT Act”), including issuance of a show cause notice to the accused, which was not responded to, and getting sanction of the Principal Commissioner of Income Tax under Section 279(1) of the IT Act for prosecuting the accused, lodged complaints against the accused before the Trial Court under Sections 277A and 278 of the IT Act.

3.3 The Trial Court, *vide* two separate adjudications, both dated 20.02.2025, took the complaints on file and ordered issuance of summons and directed listing of the matters on 19.03.2025.



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3.4 As stated in the opening paragraph, the aforesaid two adjudications are under attack in the instant criminal original petitions.

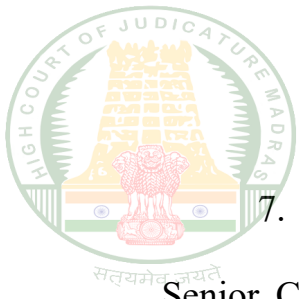
4. Mr. Abudukumar Rajaratnam, learned Senior Counsel representing Mr. K.R. Ramesh Kumar, learned counsel on record for the accused, contended that the impugned adjudications are liable to be set aside on the short ground of not affording an opportunity to the accused before taking cognizance of the offences. In support of this contention, the learned Senior Counsel pressed into service the first proviso to Section 223 (1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “the BNSS”), as per which, no cognizance of an offence can be taken by the Magistrate without affording the accused an opportunity of hearing.

5. Ms. M. Sheela, learned Senior Standing Counsel for Income Tax Department representing the complainant, countered the above submission of the learned Senior Counsel, by arguing that the first proviso to Section 223(1) of the BNSS, was introduced only with an intention to avoid frivolous complaints being taken on file and in the cases on hand, when sufficient safeguards are already there in the IT Act and when due sanction for prosecution has been obtained from the Principal Commissioner of



Income Tax, as mandated under Section 279(1) of the IT Act, the very purpose behind the introduction of the first proviso to Section 223(1) of the BNSS gets achieved and there is no need whatsoever for the Trial Court to afford an opportunity of hearing to the accused, which, even if afforded, would only be an empty formality. She further submitted that in the cases on hand, the search was conducted by the complainant on 15.06.2022 and the investigation proceeded based on the search which is prior to the coming into the force of the BNSS and thus, the procedure under the BNSS requiring grant of opportunity of hearing to the accused before taking cognizance is not necessary.

6. Her further submission is that affording an opportunity of hearing to the accused and then taking cognizance of the offences is a cumbersome procedure as it involves service of notice on the accused which is a difficult task and it will only delay the prosecution, thereby causing much inconvenience to the Income Tax Department; further, in the event of such a procedure taken recourse to, it will amount to conducting a pre-trial prior to taking cognizance; viewed from that angle, much significance or importance need not be attached to the first proviso to Section 223(1) of the BNSS and hence, the impugned adjudications do not warrant interference.



7. In reply to the counter submission made by Ms. Sheela, learned

Senior Counsel for the accused contended that when the language in the statute is plain, clear, unequivocal and unambiguous leaving no scope for interpretation, the Court cannot read into what is stated in the statute and in the guise of interpretation, the Court cannot legislate. In this regard, he placed reliance on the judgment of the Supreme Court in **B. Premanand vs. Mohan Koikal**¹. In other words, according to him, when the first proviso to Section 223(1) of the BNSS very specifically provides for affording an opportunity of being heard before taking cognizance, the Trial Court ought not to have taken cognizance of the offences by giving a complete and convenient go-by to that procedure. According to the learned Senior Counsel, the date of taking cognizance is crucial and any act that had taken place prior to cognizance being taken has no significance and hence, the argument of Ms. Sheela *qua* the Trial Court not providing an opportunity of hearing prior to taking cognizance, does not have legs to stand.

8. In support of his submission that an opportunity of hearing provided in a statute is not an empty formality, the learned Senior Counsel relied on the judgment in **Krishna Mohan Medical College and Hospital vs. Union of India**².

¹ (2011) 4 SCC 266

² (2017) 15 SCC 719



9. By garnering support from the judgment in **Kushal Kumar Agarwal vs. Directorate of Enforcement**³, the judgment of the Calcutta High Court in **Kaberi Dey vs. Sourav Bhattacharjee**⁴ and the judgment of the Bombay High Court in **Sashidhar Jagdishan vs. State of Maharashtra**⁵, the learned Senior Counsel contended that before a complaint is taken on file, as per the first proviso to Section 223(1) of the BNSS, an opportunity of hearing ought to be afforded by the Magistrate and this is not an empty formality.

10. Heard both sides and perused the materials available on record.

11. The summation of facts at paragraph 3, *supra*, is not in dispute.

12. The point that emerges for consideration in these cases lies in a very narrow compass and that point is, whether, before taking cognizance of the complaints, the Trial Court ought to have afforded an opportunity of hearing to the accused, as mandated under the first proviso to Section 223(1) of the BNSS.

3 2025 SCC OnLine SC 1221

4 2025 SCC OnLine Cal 5928

5 2025 SCC OnLine Bom 2928



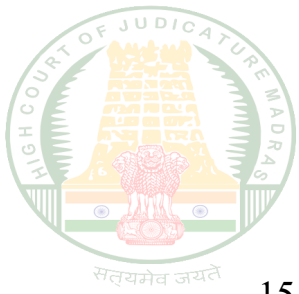
13. For better appreciation of the issue on hand, it is worth extracting Section 223(1) of the BNSS not in its entirety but only the relevant portion around which the issue revolves, at the cost of prolixity:

“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.

.....
.....”

14. In **Kushal Kumar Agarwal**, *supra*, relied on by the learned Senior Counsel for the accused, in which, the complaint arose under the Prevention of Money Laundering Act, 2002, the Supreme Court had an occasion to deal with the first proviso to Section 223(1) of the BNSS. In the said judgment, the Supreme Court, by a terse order, set aside the impugned order of the Enforcement Directorate on the sole ground of non-compliance of the first proviso to Section 223(1) of the BNSS, however, without expressing any opinion on the merits of the complaint. To be noted, as already alluded to above, though the said case arose under the PMLA, what has to be taken note of by this Court is, the requirement of compliance of the first proviso to Section 223(1).

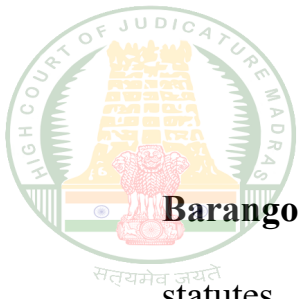


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15. The view taken by the Supreme Court in **Kushal Kumar Agarwal**, *supra*, was followed in **Kaberi Dey**, *supra*, and **Sashidhar Jagdishan**, *supra*, by the Calcutta and Bombay High Courts respectively, albeit the complaints in both the said cases arose from the BNS, 2023.

16. Next, coming to the submission of Ms. Sheela that the first proviso to Section 223(1) of the BNSS does not deserve much weightage to be given, the same deserves to be stated only to be rejected, for, the vires of the said proviso is not assailed. In the considered opinion of this Court, without assailing its vires, the learned Senior Standing Counsel cannot be heard to contend that the Income Tax Act has ample safeguards in itself and viewed from such perspective, complying with the first proviso to Section 223(1) will only be an empty formality, it will amount to conducting a pre-trial prior to cognizance being taken and it will delay the prosecution.

17. At this juncture, this Court is only reminded of the settled law in the judgment of the Supreme Court in **State of Uttar Pradesh vs. Singhara Singh**⁶ subsequently quoted with approval in **Competent Authority vs.**



Barangore Jute Factory and Others⁷, on the law of interpretation of

statutes, wherein, it was held in crystal clear terms that where a statute requires to do a certain thing in a certain way, the thing must be done only in that way or not at all and other methods of performance are necessarily forbidden. For the sake of ready reference, the relevant portion from

Singhara Singh, supra, is extracted below:

“8. The rule adopted in *Taylor v. Taylor* [(1875) 1 Ch D 426, 431] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.”

(emphasis supplied by this Court)

18. In view of the aforesaid ratio, this Court is not inclined to concur with the stance of the complainant that the Income Tax Act has got an inbuilt safeguard to avoid frivolous complaints in the form of Section 279 and hence, the cases in **Kushal Kumar Agarwal, supra**, **Kaberi Dey, supra**, and **Sashidhar Jagdishan, supra**, which arose from the PMLA and BNS, respectively, are distinguishable on facts and hence, cannot be pressed into service.

⁷ (2005) 13 SCC 477



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19. Superadded, there is no provision in the Income Tax Act even, as per which, the Income Tax Act will prevail over the Code of Criminal Procedure in the event of there being a conflict with each other.

20. Having had the above discussion, what remains to be ascertained by this Court is that whether the provisions of the BNSS would be applicable in the instant case as the investigation had commenced as early as on 15.06.2022, *i.e.*, prior to kicking in of the BNSS and further, even the sanction for prosecution under the Income Tax Act was obtained on 28.03.2024. In order to ascertain whether the provisions of Cr.P.C. or the BNSS would apply in the instant case, this Court is guided by Section 531 of the BNSS. As per Section 531 of the BNSS, if, before the date on which BNSS came into force (*i.e.* 01.07.2024), 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 Cr.P.C., as if the BNSS had not come into force.



21. At this juncture, it will be useful to allude to Section 531 of the BNSS, which reads as under:

“**531. Repeal and savings.**— (1) The Criminal Procedure Code, 1973 (2 of 1974) is hereby repealed.

(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 Criminal Procedure Code, 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;”

22. In this regard, it will be felicitous to advert to the very recent judgment of the Hon'ble Supreme Court in **Parvinder Singh v. Directorate of Enforcement**⁸, wherein, it has been held that 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 and it is not a mere irregularity but an illegality that would vitiate the very proceedings. It has been further held that the date of taking cognizance is crucial and though the complaint is filed prior to coming into force of the BNSS and taking of cognizance is after the coming into force of the BNSS, the provisions of the BNSS would apply and the right of hearing cannot be dispensed with. The relevant portion of **Parvinder Singh, supra**, is as below:

8 (2026) SCC OnLine SC 903
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"35. The learned ASG placed reliance upon the decision of this Court in Hardeep Singh (supra) to contend that in the facts of the instant case, the inquiry had been initiated upon filing of the prosecution complaint on 24.06.2024 which is, admittedly, prior to the commencement of the BNSS on 01.07.2024. We find that the said decision actually militates against the submission made by him, and would only quote the following paragraphs in the aforesaid decision:

"26 In Raghubans Dubey v. State of Bihar, AIR 1967 SC 1167, this Court held: (AIR p. 1169, para 9)

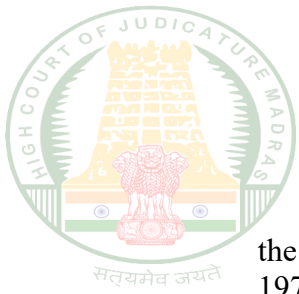
"9. ... once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence."

27. The stage of inquiry commences, insofar as the court is concerned, with the filing of the charge-sheet and the consideration of the material collected by the prosecution, that is mentioned in the charge-sheet for the purpose of trying the accused. This has to be understood in terms of Section 2(g) CrPC, which defines an inquiry as follows:

"2. (g) 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or court."

28. In State of U.P. v. Lakshmi Brahman, (1983) 2 SCC 372, this Court held that from the stage of filing of charge-sheet to ensuring the compliance with the provision of Section 207 CrPC, the court is only at the stage of inquiry and no trial can be said to have commenced. The above view has been held to be per incuriam in Raj Kishore Prasad v. State of Bihar, (1996) 4 SCC 495, wherein this Court while observing that Section 319(1) CrPC operates in an ongoing inquiry into, or trial of, an offence, held that at the stage of Section 209 CrPC, the court is neither at the stage of inquiry nor at the stage of trial. Even at the stage of ensuring compliance with Sections 207 and 208 CrPC, it cannot be said that the court is at the stage of inquiry because there is no judicial application of mind and all that the Magistrate is required to do is to make the case ready to be heard by the Court of Session."

(emphasis as supplied therein)



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36. As rightly held by this Court in Hardeep Singh (*supra*), even the stage of ensuring compliance with Sections 207 to 209 of the CrPC, 1973 cannot be termed as an inquiry because there is no application of judicial mind. In the facts of the instant case, the direction issued by the Special Court, vide order dated 24.06.2024, to number the complaint and, thereafter, post the matter on a future date for hearing on cognizance would certainly not come within the purview of an “inquiry” under Section 2(1)(k) of the BNSS. In such view of the matter, the aforestated contention raised by the learned ASG falls to the ground.

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.

(emphasis supplied by this Court)

23. Adding to the abovesaid, **Parvinder Singh**, *supra*, has also held that the non-compliance of Section 223(1) of the BNSS is not a mere irregularity and that the same is an illegality that would vitiate the proceedings.

24. In the instant case, though the investigation and the obtaining of sanction for prosecution were concluded prior to the kicking in of the BNSS (*i.e.* 01.07.2024), the complaint in E.O.C.C. Nos. 3 of 2025 and 2 of 2025 had been filed only on 29.01.2025 and cognizance also was taken only on 20.02.2025 which means that both filing of the complaints and taking of



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cognizance of the offences were subsequent to the kicking in of the BNSS

(i.e. 01.07.2024). Hence, this Court holds that only the provisions of the

BNSS would be applicable for the 'inquiry' *i.e.*, cognizance, by the Trial

Court.

25. The corollary of the discussion made thus far is that the impugned adjudications wherein cognizance has been taken without affording an opportunity to the accused are liable to be set aside and they are, accordingly, set aside and the matter is remitted to the Trial Court for affording an opportunity of hearing to the accused.

26. Now that the accused are aware of the filing of these cases, no notice is required to be issued to them and they shall appear before the Trial Court within a period of ten days from the date of receipt of a copy of this order and upon their appearance, the Trial Court shall hear them and pass orders in accordance with law.

27. The criminal original petitions stand disposed of on the above terms. Connected criminal miscellaneous petitions stand closed.

05.06.2026

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A.D. JAGADISH CHANDIRA, J.

cad

To

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Central Circle – 2 (2)
Room No.B-4, Ground Floor
Income Tax Investigation Building
No.46, M.G. Road
Nungambakkam
Chennai 600 034
2. The Additional Chief Metropolitan Magistrate
EO-I
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Common order
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