IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2026

CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

Crl.O.P.No.35200 of 2025
and Crl.M.P.Nos.24737 and 24738 of 2025

1.R.Sampath
S/o.Late V.N.Ramachandran
2.S.Suguna
W/o.R.Sampath
Both residing at,
MIG-590, 28th Cross Street,
Thiruvallur Nagar,
Thiruvanmiyur,
Chennai-600 041

Petitioners

Vs

The Assistant Director
Directorate of Enforcement,
(The Prevention of Money Laundering
Act, 2002)
Government of India,
Ministry of Finance, Department of Revenue,
5th & 6th Floor, BSNL Administrative Building
No.2, Kushkumar Road, Nungambakkam,
Chennai-600 034

Respondent

PRAYER: Petition filed under Section 528 of BNSS, 2023 to call for the records in Spl. C.C.No.8 of 2025 pending on the file of the XIV Additional Special Judge for CBI Cases, Chennai and quash the proceedings as against the petitioners.

For Petitioners: Mr.A.Nagarajan

For Respondent: Mr.Sibi Vishnu
Special Public Prosecutor
for ED Cases

ORDER
(Order of the Court was made by the Hon'ble Chief Justice)

Heard learned counsel for the parties.

2. This petition has been filed by the petitioners aggrieved by the order dated 07.10.2025, by which the Principal Sessions Judge, Chennai, has taken cognizance of the offences alleged in the complaint in the matter of ECIR/CEZO-1/03/2020.

3. The only submission to challenge the order taking

cognizance is that it is directly in the teeth of the order passed by the Supreme Court in the case of ***Kushal Kumar Agarwal v. Directorate of Enforcement***[1]. Learned counsel for the petitioners would submit that in view of the aforesaid authoritative pronouncement of the Supreme Court, no cognizance could be taken without giving notice to the petitioners, as the complaint itself was filed on 26.03.2025, after coming into force of Bharatiya Nagarik Suraksha Sanhita, 2023, whereafter, cognizance was taken on 07.10.2025.

4. On the other hand, learned counsel for the respondent, relying upon the judgment of the Uttarakhand High Court in the case of ***Parvinder Singh v. Directorate of Enforcement (ED)***[2] and a judgment of a Division Bench of this Court in the case of ***G.Ganesan v. Deputy Director, Directorate of Enforcement, Ministry of Finance***[3] submits that since in the present case the ECIR was registered prior to coming into force of the BNSS with effect from 1.7.2024, further proceedings shall be governed by the

[1] 2025 SCC OnLine SC 1221
[2] Crl. Rev. No.218 of 2025, dated 19.05.2025
[3] 2025 SCC OnLine Mad 11885

repealed Code of Criminal Procedure, 1973, as per the provisions contained in Section 531 of the BNSS.

5. In the case of ***Kushal Kumar Agarwal*** (supra), their Lordships in the Supreme Court have authoritatively enunciated the legal position in this regard as below:

> *"3. In the present case, a complaint was filed under Section 44(1)(b) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the PMLA") on August 2, 2024. The appellant is shown as accused in the complaint. The Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "the BNSS") came into force on July 1, 2024. Section 223 of the BNSS reads thus:*
>
> > *'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.'

4. Section 223 of the BNSS corresponds to Section 200 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the CrPC'). However, a proviso similar to the proviso to sub-section (1) of Section 223 does not find place in Section 200 of the CrPC.

5. This Court has taken a consistent view that a complaint filed by the Enforcement Directorate under Section 44 (1)(b) of the PMLA will be governed by Sections 200 to 204 of the CrPC. This view has been taken by this Court in the cases of Yash Tuteja v. Union of India, 2024 SCC OnLine SC 533 and Tarsem Lal v. Enforcement Directorate, (2024) 7 SCC 61. Therefore, the provisions of Chapter XVI, containing Sections 223 to 226, will also apply to a complaint under Section 44 of the PMLA. As the complaint has been filed after 1st July, 2024, Section 223 of the BNSS will apply to the present complaint.

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."

6. The legal position, therefore, is clear that proviso to sub-section (1) of Section 223 of the BNSS 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. This conclusion was derived by the Apex Court on the finding that a complaint filed by the Enforcement Directorate under Section 44 of the Prevention of Money Laundering Act, 2002 (PMLA) will be governed by Sections 200 to 204 of the Cr.P.C., relying upon the earlier decisions in the cases of ***Yash Tuteja v. Union of India***[4] and ***Tarsem Lal v. Enforcement Directorate***[5]. Therefore the provision of Chapter XVI containing Sections 223 to 226 will also apply to a complaint under Section 44 of PMLA. In a case where a complaint has been filed after 1.7.2024, Section 223 of BNSS will become applicable.

[4] 2024 SCC OnLine SC 533
[5] (2024) 7 SCC 61

7. The decisions relied upon by learned counsel for the respondent dealt with different factual premise. One of the judgments in the case of ***G.Ganesan*** (supra) has been assailed by filing SLP in the Supreme Court and an interim order has been passed on 05.01.2026.

8. Be that as it may, in view of the clear enunciation of law by the Supreme Court in the case of ***Kushal Kumar Agarwal*** (supra), the impugned order taking cognizance without issuing notice to the petitioners is *per se* illegal and impermissible in law.

9. Accordingly, the order dated 07.10.2025 taking cognizance in Spl. C.C.No.8 of 2025 pending on the file of XIV Additional Special Judge for CBI Cases, Chennai, is set aside. The complaint is restored to its original file number and the Court concerned shall proceed in accordance with law.

The Criminal Original Petition is partly allowed in terms aforesaid. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(MANINDRA MOHAN SHRIVASTAVA, CJ) (G.ARUL MURUGAN,J)
23.01.2026

Index : Yes/No
Neutral Citation : Yes/No
bbr

To:

The Assistant Director
Directorate of Enforcement,
(The Prevention of Money Laundering Act, 2002)
Government of India,
Ministry of Finance, Department of Revenue,
5th & 6th Floor, BSNL Administrative Building
No.2, Kushkumar Road,
Nungambakkam,
Chennai-600 034

THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

bbr

Crl.O.P.No.35200 of 2025

23.01.2026