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Anti-Corruption, White Collar Crimes & Investigations Practice

June 2026

Supreme Court of India holds that an opportunity of hearing to the accused before taking cognizance applies to proceedings under the Prevention of Money Laundering Act, 2002

In a decision on the scope and applicability of the first proviso to Section 223(1)¹ of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (“**BNSS**”) to proceedings under the Prevention of Money Laundering Act, 2002 (“**PMLA**”), the Supreme Court of India (“**Supreme Court**”), in *Parvinder Singh vs. Directorate of Enforcement*,² has held that the provisions governing complaints under Sections 200 to 205 of the Code of Criminal Procedure, 1973³ (“**CrPC**”) (now Sections 223 to 228⁴ of the BNSS) are applicable to proceedings under the PMLA.

Briefly, the Supreme Court held as follows:

1. the first proviso to Section 223(1) of the BNSS is substantive in nature, as it confers a right upon the accused to be heard before taking cognizance, which forms a part of the right to a fair trial under Article 21 of the Constitution of India;
2. cognizance of an offence taken without compliance of the said proviso would be void *ab initio*; and
3. a mere ministerial act of numbering a complaint and fixing a date for hearing on cognizance does not constitute an ‘inquiry’ under Section 2(1)(k)⁵ of the BNSS, and therefore, Section 531(2)(a)⁶ of the BNSS would have no application.

Brief facts

1. An enforcement case information report was registered by the Directorate of Enforcement (“**ED**”) against the appellant on July 24, 2023, pursuant to which he was arrested on April 27, 2024. A prosecution complaint was filed by the ED on June 24, 2024 invoking Sections 44 and 45 of the PMLA before the designated Special Court. On the same day, the Special Court directed the complaint to be registered as a miscellaneous case and fixed it for hearing on cognizance on June 28, 2024.

¹ The first proviso to Section 223(1) of the BNSS provides that no cognizance of an offence ‘shall’ be taken by the Magistrate without giving the accused an opportunity of being heard.

² Criminal Appeal arising out of SLP (Crl.) No. 12055 of 2025 (decided on May 19, 2026)

³ The CrPC was replaced by the BNSS with effect from July 1, 2024.

⁴ Sections 223 to 228 of the BNSS deal with the procedure governing complaints. These provisions empower the court to examine the complainant and witnesses (Section 223), procedure by Magistrate not competent to take cognizance of cases (Section 224), postpone the issuance of process (Section 225), dismissal of complaint (Section 226), issue of process (Section 227), and dispensation with the personal attendance of the accused (Section 228).

⁵ Section 2(1)(k) of the BNSS defines ‘inquiry’ as every inquiry, other than a trial, conducted under the BNSS by a Magistrate or Court

⁶ Section 531(2)(a) of the BNSS saves proceedings initiated under the CrPC, prior to the commencement of the BNSS, to be disposed of in accordance with the provisions of the CrPC.

2. When the case came up for hearing, it was adjourned to July 2, 2024. In the interim, the CrPC was replaced by the BNSS with effect from July 1, 2024. On July 2, 2024, the Special Court took cognizance of the offence.
3. An application for recall of the cognizance order was filed, alleging that the mandate of Section 223 of the BNSS had not been complied with, as the appellant was not given an opportunity of hearing before taking cognizance. The Special Court dismissed the recall application and also framed charges against the appellant.
4. The appellant preferred criminal revisions before the High Court of Uttarakhand ("**Uttarakhand HC**"). The Uttarakhand HC held that the provisions of Section 223 of the BNSS would not have any application as the proceedings were initiated prior to the commencement of the BNSS, placing reliance upon Section 531(2)(a) of the BNSS.
5. The appellant preferred the special leave petition.

Issues

1. Whether Sections 200 to 205 of the CrPC (now Sections 223 to 228 of the BNSS) are applicable to proceedings under the PMLA?
2. Whether a mere ministerial act of numbering a complaint and fixing a date for hearing on cognizance constitutes an 'inquiry' under Section 2(1)(k) of the BNSS, thereby attracting Section 531(2)(a) of the BNSS?
3. Whether cognizance taken without affording an opportunity of hearing to the accused in terms of the first proviso to Section 223(1) of the BNSS is valid?

Findings and analysis

Applicability of the complaint procedure under the CrPC (now BNSS) to the PMLA

The Supreme Court observed that the issue of application of the procedure pertaining to a complaint under the CrPC (now BNSS) to proceedings under the PMLA is no longer *res integra*. The Supreme Court referred to its earlier decisions in *Tarsem Lal vs. ED*,⁷ *Yash Tuteja and Ors. vs. Union of India*⁸ and *Kushal Kumar Agarwal vs. ED*⁹.

The Supreme Court also rejected the submission that the earlier decision in *Kushal Kumar Agarwal* (supra) required reconsideration and reference to a larger bench. It held that taking away the applicability of the provisions governing complaints under Sections 200 to 205 of the CrPC (now Sections 223 to 228 of the BNSS) to proceedings under the PMLA would lead to disastrous consequences. If such an argument were accepted, the Special Court under the PMLA would have no jurisdiction to dismiss a complaint despite an absolute lack of evidence, postpone the issuance of process, issue process, or dispense with the appearance of an accused.

First proviso to Section 223(1) of the BNSS is substantive in nature

The Supreme Court held that the first proviso to Section 223(1) of the BNSS is substantive in nature, as it does not merely regulate the manner in which proceedings are to be conducted, but confers a right upon the accused to be heard before taking cognizance, which forms a part of the right of an accused to a fair trial enshrined under Article 21 of the Constitution of India.

The word 'shall' occurring in the said proviso has to be construed to be mandatory in nature, which enures to the benefit of an accused. Cognizance of an offence taken by a court without due compliance of the said proviso would be void *ab initio*.

⁷ (2024) 7 SCC 61

⁸ (2024) 8 SCC 465

⁹ 2025 SCC OnLine SC 1221

A mere ministerial act does not constitute an 'inquiry' under Section 2(1)(k) of the BNSS

The Supreme Court held that a mere ministerial act cannot be termed as an 'inquiry' under Section 2(1)(k) of the BNSS. Taking cognizance is nothing but an application of judicial mind. So long as the application of the judicial mind is not exercised, an inquiry cannot commence.

The Supreme Court referred to its decision in *Hardeep Singh vs. State of Punjab*¹⁰ and held that even the stage of ensuring compliance with Sections 207 to 209 of the CrPC cannot be termed as an inquiry because there is no application of judicial mind. The direction issued by the Special Court to number the complaint and post the matter on a future date for hearing on cognizance would not come within the purview of an 'inquiry' under Section 2(1)(k) of the BNSS.

Non-compliance with the first proviso vitiates the order of cognizance

The Supreme Court 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. It held that non-compliance is not a mere irregularity but an illegality that would vitiate the very proceedings.

In operative portion, the Special Court was directed to afford an opportunity of hearing to the appellant by proceeding from the stage of taking cognizance and complete the exercise within a period of 8 (eight) weeks.

Conclusion

This judgment clarifies the interplay between the PMLA and the BNSS in the context of complaint proceedings. It provides clarity on the following aspects:

1. Sections 200 to 205 of the CrPC (now Sections 223 to 228 of the BNSS) are applicable to proceedings under the PMLA, as none of the said provisions are inconsistent with any of the provisions of the PMLA;
2. the first proviso to Section 223(1) of the BNSS, mandating an opportunity of hearing to the accused before taking cognizance, is substantive and mandatory in nature. Non-compliance renders the cognizance void *ab initio*;
3. a mere ministerial act of numbering a complaint and fixing a date for hearing does not constitute an 'inquiry' under Section 2(1)(k) of the BNSS, and therefore, Section 531(2)(a) of the BNSS cannot be invoked to exclude the applicability of the BNSS.

¹⁰ (2014) 3 SCC 92

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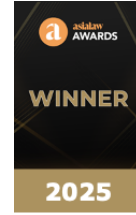
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