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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Harjeet Singh Puri

...Petitioner

V/s

Directorate of Enforcement

...Respondent

Date of decision: 27.10.2026

Date of Uploading : 30.10.2026

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Garima Singh, Advocate with
Mr. Vijay Kumar Sharma, Mr. Atul Dubey,
Mr. Aditya Tomar and Ms. Vanshita Singh, Advocates,
for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India
with Mr. Lokesh Narang, Senior Panel Counsel
for the respondent-ED.

SUMEET GOEL, J.

1. Taking exception to the cognizance order dated 23.04.2026 (hereinafter referred to as '*impugned order*') passed by learned Special Judge (PMLA), Gurugram, the petitioner – Harjeet Singh Puri has preferred the instant petition (hereinafter referred to as '*petition in hand*') with the following substantive prayer:

“(a) Quash the impugned cognizance and summoning order dated 23.04.2026 passed by the Learned Sessions Judge-cum-Special Judge (PMLA), gurugram ECR No. ECIR/CNZO/21/2023 Dated 10.11.2023 in COMPLAINT NO.03 of 2025 DATED 10.03.2025;

(b) Quash all consequential proceedings arising therefrom qua the present Petitioner.”

2. Shorn of the non-essential details, the relevant factual *milieu* of the *lis* in the *petition in hand* is adumbrated thus:

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(i) A case bearing FIR No. RC2172023A0007, dated 26.04.2023 was registered under Section 109 of IPC, 1860 and 13(2) r/w 13(1)(b) of the Prevention of Corruption Act, 1988 at PS- CBI, AC-II, Delhi on the basis of written complaint dated 26.04.2023 from Shri Sunil Kumar, Dy. Supdt. Of Police, CBI, AC-II, New Delhi against Sh. Harjeet Singh Puri (petitioner herein), the then Chief General Manager (CGM) Finance, Corporate Office, National Hydroelectric Power Corporation (NHPC), Faridabad and Smt. Arvinderjeet Kaur (wife of Harjeet Singh Puri – petitioner herein).

(ii) Pursuant thereto, the Enforcement Directorate filed an ECIR bearing No. ECIR/CNZO/21/2023 Dated 10.11.2023 and filed prosecution complaint dated 10.03.2025 before the concerned Special Court.

(iii) Vide *impugned order*, the learned Special Judge, Gurugram directed as under:

“12. In view of the forgoing discussion, this Court is satisfied that there is sufficient material to take cognizance of the offence under Section 3 punishable under Section 4 of the Prevention of Money Laundering Act, 2002 against both the accused Harjeet Singh Puri and Arvinderjeet Kaur. Accordingly, cognizance is hereby taken. Summons be issued to both the accused for appearance on 02.06.2026. Ordered accordingly.”

Rival contentions

3. Learned counsel for the petitioner has argued that, vide the *impugned order*, the learned Special Court has proceeded to take cognizance against the petitioner; without calling for the report as enumerated under Section 223(2)(b) of BNSS, 2023; which is in clear

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violation of the mandatory statutory safeguards prescribed therein. Learned counsel has iterated that, where a complaint alleges the commission of an offence by a public servant in course of the discharge of his official functions or duties, cognizance cannot be taken unless the public servant is afforded an opportunity to explain the circumstances leading to the alleged incident and a report containing the facts and circumstances of the incident is received from an officer superior to such public servant. According to learned counsel, in the instant case, no such report has been obtained from the superior officer of the petitioner and, thus, the statutory requirement as prescribed under Section 223(2)(b) of BNSS, 2023 has not been duly complied with before passing the *impugned order*.

3.1. Learned counsel has further contended that in the absence of any overriding provision under the Prevention of Money Laundering Act, 2002, the procedure prescribed under Sections 200 to 204 of the Cr.P.C., 1973, is applicable to complaints instituted before the Special Court. Accordingly, the corresponding provisions under Sections 223 to 227 of BNSS, 2023 are, therefore, required to be duly complied with while considering such complaint(s).

3.2. Learned counsel has further emphasized that, at the relevant time, the petitioner was not holding any decision making position in the NHPC Ltd. and, therefore, was not in a position to acquire any assets illegally by abusing his official position.

3.3. On the strength of these submissions, learned counsel has contended that the *impugned order* has been passed in complete disregard



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of the statutory mandate and suffers from patent illegality and is, thus, liable to be set-aside.

4. Learned counsel appearing for the *ED*; led by Mr. Satya Pal Jain, Additional Solicitor General of India alongwith Mr. Lokesh Narang, Senior Panel Counsel; has opposed the *petition in hand* and has filed reply dated 26.08.2026. The role ascribed to the petitioner (herein) reads thus:

“20. Harjeet Singh Puri, while functioning as a public servant in the capacity of Chief General Manager (Finance), NHPC, is alleged to have generated proceeds of crime arising out of scheduled offences under the Prevention of Corruption Act, 1988. The investigation establishes that during the check period from 01.01.2019 to 01.07.2021, he in connivance with his wife, accumulated assets and incurred expenditure grossly disproportionate to his known and lawful sources of income. These disproportionate assets, quantified at about Rs.1.04 crore (around 112.01% of his known income), have been treated as proceeds of crime within the meaning of Section 2(1)(u) of the PMLA, as they are directly linked to criminal misconduct committed by him as a public servant.

21. It is further alleged that Harjeet Singh Puri knowingly possessed, concealed, and used the said proceeds of crime and attempted to project them as untainted property. He adopted a pattern of extensive cash transactions, unexplained cash withdrawals, and frequent cash deposits, including routing funds through bank accounts held jointly or in the name of his wife, without any credible or verifiable explanation.

22. Additionally, Harjeet Singh Puri, was engaged in suppressing various facts such as rental income and actual expenditure, and making contradictory statements during investigation under Section 50 of the PMLA. The investigation records him as a direct beneficiary of the proceeds of crime, with active assistance from his wife in holding and layering the illicit assets.”



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4.1. Raising submission in tandem with the aforesaid reply, learned senior counsel has iterated that the sanction for prosecution of the petitioner (herein) has already been accorded vide sanction order dated 21.02.2025 by Sh. Raj Kumar Choudhary, Chairman & Managing Director, NHPC Ltd., being the competent authority to remove the petitioner from service. It has been further contended that the said sanction was granted prior to the filing of the prosecution complaint dated 10.03.2025 and records that the findings and recommendations submitted by the respondent-ED were duly examined by the competent authority which found a *prima facie* case against the petitioner. Furthermore, the sanction order forms part of the record as RUD No.40 appended with the prosecution complaint and was also available before the learned Special Court at the time of passing of the *impugned order*.

4.2. Learned senior counsel for the *ED* has further contended that the petitioner did not raise any specific objection regarding the applicability or alleged non-compliance of Section 223(2)(b) of the BNSS, 2023 before the learned Special Court and has raised this objection for the first time before this Court, which is impermissible.

4.3. It has been further contended that the statutory safeguard envisaged under Section 223(2)(b) of the BNSS, 2023 stands substantially satisfied in the instant case as the material collected during the course of investigation was examined by the competent sanctioning authority of NHPC Ltd. before sanction for prosecution was accorded. Moreover, the petitioner was afforded repeated opportunities to explain the allegations with regard to acquisition of disproportionate assets and

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his statements were recorded under Section 50 of PMLA, 2002 on 15.03.2024 19.03.2024 and 11.02.2025 respectively. However, the explanation(s) advanced by the petitioner was duly considered during the course of investigation but was found to be unsatisfactory. It has been further contended that the petitioner was also afforded opportunities of being heard by the learned Special Court prior to the passing of the *impugned order*.

4.4. Lastly, it has been contended that the learned Special Court has passed the *impugned order* after considering the prosecution complaint dated 10.03.2025; the sanction order dated 21.02.2025; the statement(s) of the petitioner recorded during investigation and the other material with regard to acquisition of disproportionate assets and, thus, the *impugned order* does not suffer from any apparent illegality warranting interference by this Court. Accordingly, the dismissal of the *petition in hand* is entreated for.

5. I have heard learned counsel for the rival parties and perused the record.

Prime Issue

6. The issue that arises for determination in the present petition is as to whether the *impugned order* dated 23.04.2026 deserves to be quashed.

The seminal legal issues that arise for cogitation are as follows:

- I. Whether an accused public servant, facing prosecution under the Prevention of Money Laundering Act, 2002 (PMLA)



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pursuant to a prosecution complaint filed under Section 44(1)(b) thereof, is entitled to the mandatory pre-cognizance safeguards enshrined under Section 223(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) & whether taking cognizance without compliance therewith vitiates the judicial process, rendering the order taking cognizance and issuing process *void-ab-initio* and legally *non-est* ?

- II. Whether the procurement or grant of *sanction* for prosecution under Section 218 BNSS/Section 197 Cr.P.C., dispenses with, or subsumes or otherwise satisfies the distinct, independent, and mandatory requirement of calling for and receiving a factual report from the superior officer under Section 223(2)(b) of the BNSS prior to taking cognizance?

7. **Relevant Statute**

I. **CODE OF CRIMINAL PROCEDURE, 1973**
(hereinafter referred to as 'Cr.P.C.')

Section 197 of the Cr. P.C.

197.Prosecution of Judges and public servants.—(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression



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by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted:

Provided further that such Government shall take a decision within a period of one hundred and twenty days from the date of the receipt of the request for sanction and in case it fails to do so, the sanction shall be deemed to have been accorded by such Government:

Provided also that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 64, section 65, section 66, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79, section 143, section 199 or section 200 of the Bharatiya Nyaya Sanhita, 2023.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the



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expression "Central Government" occurring therein, the expression "State Government" were substituted.

(4) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(5) The Central Government or the State Government, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

Section 223 of the BNSS

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.

III. PREVENTION OF MONEY-LAUNDERING ACT, 2002 (hereinafter referred to as 'PMLA')

Section 44 of the PMLA

44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

[(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or];

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take 3 [cognizance of offence under section 3, without the accused being committed to it for trial];

[Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or]

[(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) as it applies to a trial before a Court of Session.]



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(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to “Magistrate” in that section includes also a reference to a “Special Court” designated under section 43.

Section 46 of the PMLA

46. Application of the Code of Criminal Procedure, 1973 to proceedings before Special Court.—(1) *Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:*

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall have effect accordingly.

Section 65 of the PMLA

65. Code of Criminal Procedure, 1973 to apply.—*The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation investigation, prosecution and all other proceedings under this Act.*

Section 71 of the PMLA



71. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

**IV. BILL(s)/DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
REPORT(s)**

(i) **Bill No.122 of 2023 as introduced in Lok Sabha on
11.08.2023** (hereinafter referred to as '***Bill No. 122***')

210. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Judicial Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts, including any complaint filed by a person authorised under any special law, which constitutes such offence;

(b) upon a police report (recorded in any mode including digital mode) of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

(3) Any Magistrate empowered under this section, shall upon receiving a complaint against a public servant arising in course of the discharge of his official duties, take cognizance, subject to—

(a) receiving a report containing facts and circumstances of the incident from the officer superior to such public servant; and

(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.

(ii) **247th Parliamentary Committee Report** (hereinafter referred to as '***247th Report***')

“3.16 Clause 210(3) of the BNSS reads as below:-

‘Any Magistrate empowered under this section, shall upon receiving a complaint against a public servant arising in course of the discharge of his official duties, take cognizance, subject to—



- (a) receiving a report containing facts and circumstances of the incident from the officer superior to such public servant; and
- (b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.’

SUGGESTIONS:-

3.16.1 It was suggested that the Clause should be deleted as it is against all canons of criminal procedural law. In case it is to be retained, specific time-period should be added within which the report is to be submitted by the superior officer under Clause 210(3)(a) to curb any possible misuse.

OBSERVATIONS/RECOMMENDATIONS:- 3.16.2 Clause 210(3) is a new addition in BNSS and has no analogous provision under the CrPC. The Committee is of the opinion that the requirement of report of the superior officer and consideration of assertions made by the public servant has potential for misuse and might delay the entire process and therefore needs to be reconsidered.

3.16.3 The Committee also notes that Clause 210(3) has been introduced to protect public servants from frivolous complaints that may arise from actions performed in the discharge of their official duties. This provision should not be construed as limiting the rights of ordinary citizens or restricting the authority of the court when it comes to taking cognizance. Instead, it aims to reduce the backlog of false cases filed against public servants and ensures that they are not entangled in protracted legal proceedings.

3.16.4 The Committee, therefore, is of the view that, considering a possibility of misuse and to ensure balance, strict timeline for submission of report by the officer superior to such public servant should be introduced as a procedural safeguard in Clause 210(3), and a suitable amendment should be brought in the Clause.

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SUGGESTIONS:-

3.19.1 It has been suggested that, in the fourth proviso to Clause 223, reference should be drawn to Section 210 of BNSS instead of Section 217.

OBSERVATIONS/RECOMMENDATIONS:-



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3.19.2 The Committee reviewed Clause 223 of the Sanhita. The fourth proviso to Clause 223 relates to compliance of procedure by the Magistrate in the case of a complaint against a public servant. The said procedure is provided in Clause 210 of the BNSS, which pertains to 'Cognizance of offences by Magistrates'. However, the Committee observed that in the fourth proviso, there is a cross-referencing error and instead of procedure provided in 'Section 210', reference has been made to 'Section 217', which is not relevant to this proviso. The Committee, therefore, recommends that the cross-referencing error in the fourth proviso to Clause 223 may be rectified and the Clause may be suitably amended."

Relevant Case Law

8. The precedents, *apropos*, to the matter(s) in issue, are as follows:

(I) **Re: Golden Rule of Interpretation/Literal Rule of Interpretation**

(i) A Five Judges Bench of the Hon'ble Supreme Court in a judgment titled as ***Chief Justice of A.P. and others vs. L.V.A. Dixitulu and others, 1979(2) SCC 34*** has held as under:-

"66. The primary principle of interpretation is that a Constitutional or statutory provision should be construed "according to the intent of they that made it"(Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the and literal confines of the provision and to call in aid other well-recognized rules of construction, such as its



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legislative history, the basis scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.”

(ii) In a judgment rendered by the Hon’ble Supreme Court in ***National Insurance Co. Ltd. vs. Laxmi Narain Dhut, 2007(3) SCC 700***, it has been held as under:

“29. “Golden Rule” of interpretation of statutes is that statutes are to be interpreted according to grammatical and ordinary sense of the word in grammatical or liberal meaning unmindful of consequence of such interpretation. It was the predominant method of reading statutes. More often than not, such grammatical and literal interpretation leads to unjust results which the Legislature never intended. The golden rule of giving undue importance to grammatical and literal meaning of late gave place to ‘rule of legislative intent’. The world over, the principle of interpretation according to the legislative intent is accepted to be more logical.”

(II) **Re: Heydon’s Rule of Interpretation/Mischief Rule of Interpretation**

(i) A Seven Judges Bench of the Hon’ble Supreme Court in a judgment titled as ***Bengal Immunity Co. Ltd. Vs. State of Bihar and others, 1995 AIR Supreme Court, 661***, has held as under:-

“(22) It is a sound rule of construction of a statute firmly established in England as far back as 1584 when – ‘Heydon’s case, (1584) 3 Co Rep 7a (V) was decided that –

“.....for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st What was the common law before the making of the Act

2nd What was the mischief and defect for which the common law did not provide,



3rd What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and ‘pro private commodo’, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, ‘pro bono publico’ ”.

In – ‘In re, Mayfair Property Co.’ (1898) 2 Ch 28 at p. 35 (W) Lindley M.R. in 1898 found the rule “as necessary now as it was when Lord Coke reported ‘Heydon’s case (V)’, In – ‘Eastman photographic Material Co. v. Comptroller General of Patents, Designs and Trade marks’, 1898 AC 571 at p. 576 (X) Earl of Halsbury re-affirmed the rule as follows :

“My Lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I cannot doubt the conclusion.”

It appears to us that this rule is equally applicable to the construction of Article 286 of our Constitution. In order to properly interpret the provisions of that Article it is, therefore, necessary to consider how the matter stood immediately before the Constitution came into force, what the mischief was for which the old law did not provide and the remedy which has been provided by the Constitution to cure that mischief.”

(ii) The Hon’ble Supreme Court in a judgment titled as **R.M.D.**

Chamarbaugwalla and another vs. Union of India and another, 1957

AIR (Supreme Court) 628, held as under:

“6..... Now, when a question arises as to the interpretation to be put on an enactment, what the Court has to do is to ascertain “the intent of them that make it”, and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literal interpretation of the words used in



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disregard of all other materials. "The literally construction then", says Maxwell on Interpretation of Statutes, 10th Edn., p.19, "has, in general, but prima facie preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy". The reference here is to Heydon's case. These are principles well settled, and were applied by this Court in Bengal Immunity Co. Ltd. v. State of Bihar, 1955-2 SCR 603 at p.633. To decide the true scope of the present Act, therefore we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to suppress and the other provisions of the statute....."

(III) ***Re: Ut Res Magis Valeat Quam Pereat*** (i.e. a thing may rather have effect than be destroyed)

(i) In a judgment titled as ***Commissioner of Income-tax, Delhi v. S. Teja Singh, 1958 SCC Online SC 30***, a Three Judge Bench of the Hon'ble Supreme Court has held as under:-

"9. xxxxxxxxxxxxxxxxxxxx. A construction which leads to such a result must, if that is possible, be avoided, on the principle expressed in the maxim, "Ut res magis valeat quam pereat ". Vide Curtis v. Stovin, (1889) 22 QBD 513 and in particular, the following observations of Fry, L. J., at page 519:

"The only alternative construction offered to us would lead to this result, that the plain intention of the legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt this construction, we should be construing the Act in order to defeat its object rather than with a view to carry its object into effect."



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(ii) In a judgment titled as ***Management of Advance Insurance Co. Ltd. v. Shri. Gurudasmal and others 1970(1) SCC 633***, a Five Judge Bench of the Hon'ble Supreme Court has held as under:-

"21. It is no doubt true that the words are susceptible of the other meaning also but so long as the words are capable of bearing the meaning we have given it is not necessary to discover another meaning under which the whole scheme would become void. Provisions of law must be read as far as is possible with a view to their validity and not to render them invalid. In our judgment the expression 'belonging to' only conveys the meaning that it is a police force constituted and functioning in one area which may be authorised to function in another area. The change from 'for' to 'in' makes no difference because both expressions fit in with the meaning of the phrase 'belonging to' in the Entry. We see no force in this argument also."

(iii) In a judgment titled as ***Tinsukhia Electric Supply Co. Ltd. v. State of Assam, 1989(3) SCC 709***, a Five Judge Bench of the Hon'ble Supreme Court has held as under:-

"49. The Courts strongly lean against any construction which tends to reduce a Statute to a futility. The provision of a Statute must be so construed as to make it effective and operative, on the principle "Ut res majis valeat quam periat". It is, no doubt, true that if a Statute is absolutely vague and its language wholly intractable and absolutely meaningless, the Statute could be declared void for vagueness. This is not in judicial-review by testing the law for arbitrariness or unreasonableness under Article 14; but what a Court of construction, dealing with the language of a Statute, does in order to ascertain from, and accord to, the Statute the meaning and purpose which the legislature intended for it. In Manchester Ship Canal Co. v. Manchester Racecourse Co., [1900] 2 Ch. 352 Farwell J. said:

"Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty. " (See page 360 and 361)

In Fawcett Properties v. Buckingham Country Council, [1960] 3 All ER 503, Lord Denning approving the dictum of Farwell, J. said:



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"But when a Statute has some meaning, even though it is obscure, or several meanings, even though it is little to choose between them, the Courts have to say what meaning the Statute has to bear rather than reject it as a nullity." (Vide page 516)

It is, therefore, the Court's duty to make what it can of the Statute, knowing that the Statutes are meant to be operative and not inept and that nothing short of impossibility should allow a Court to declare a Statute unworkable. In Whitney v. Inland Revenue Commissioners, [1926] AC 37 Lord Dunedin said:

"A Statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable." (vide page 52)."

(iv) In a judgment titled as ***Commissioner of Income Tax v. Hindustan Bulk Carriers, 2003(3) SCC 57***, a Three Judge Bench of the Hon'ble Supreme Court has held as under:-

"14. A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in maxim ut res magis valeat quam pereat i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. (See Broom's Legal Maxims (10th Edition), page 361, Craies on Statutes (7th Edition) page 95 and Maxwell on Statutes (11th Edition) page 221.)

(IV) **Re: Applicability of safeguards under Section 223 BNSS to complaint/prosecution arising out of PMLA**

(i) The Hon'ble Supreme Court in a judgment titled as ***Tarsem Lal v. Enforcement Directorate, (2024) 7 SCC 61*** has held as under:

"17. After carefully perusing the provisions of PMLA, we find that there is no provision therein which is in any manner inconsistent with Section 205 CrPC. Hence, it will apply to a complaint under PMLA. A summons is issued on a complaint to ensure attendance of the accused before the criminal court. If an accused is in custody, no occasion arises for a court to dispense with the personal attendance of the accused. We may note here that Section 205 empowers the court to



grant exemption only when a summons is issued. Sub-section (2) of Section 205 provides for enforcing the attendance of the accused before the court at the time of the trial. If the accused who appears pursuant to the summons issued on a complaint were deemed to be in custody, the lawmakers would not have provided for Section 205...

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33. Now, we summarise our conclusions as under:

33.1. Once a complaint under Section 44(1)(b) PMLA is filed, it will be governed by Sections 200 to 205 CrPC as none of the said provisions are inconsistent with any of the provisions of PMLA;

33.2. If the accused was not arrested by ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued.

33.3. After a summons is issued under Section 204 CrPC on taking cognizance of the offence punishable under Section 4 PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 CrPC;

33.4. In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 CrPC; ”

(ii) The Hon’ble Supreme Court in a judgment titled as **Yash Tuteja & Anr. V. Union of India, (2024) 8 SCC 465** has held as under:

“6. The only mode by which the cognizance of the offence under Section 3, punishable under Section 4 PMLA, can be taken by the Special Court is upon a complaint filed by the Authority authorised on this behalf. Section 46 PMLA provides that the provisions of CrPC (including the provisions as to bails or bonds) shall apply to



proceedings before a Special Court and for the purposes of CrPC provisions, the Special Court shall be deemed to be a Court of Sessions. However, sub-section (1) of Section 46 starts with the words “save as otherwise provided in this Act”. Considering the provisions of Section 46(1) PMLA, save as otherwise provided in PMLA, the provisions of the Code of Criminal Procedure, 1973 (for short “CrPC”) shall apply to the proceedings before a Special Court. Therefore, once a complaint is filed before the Special Court, the provisions of Sections 200 to 204 CrPC will apply to the complaint. There is no provision in PMLA which overrides the provisions of Sections 200 to 204 CrPC. Hence, the Special Court will have to apply its mind to the question of whether a prima facie case of a commission of an offence under Section 3 PMLA is made out in a complaint under Section 44(1)(b) PMLA. If the Special Court is of the view that no prima facie case of an offence under Section 3 PMLA is made out, it must exercise the power under Section 203 CrPC to dismiss the complaint. If a prima facie case is made out, the Special Court can take recourse to Section 204 CrPC.” ”

(iii) The Hon’ble Supreme Court in a judgment titled as ***Kaushal Kumar Aggarwal v. Directorate of Enforcement, 2025 SCC OnLine SC 1221*** has held as under:

“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) 8 SCC 465, 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.



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.” ”*

(iv) The Hon’ble Supreme Court in a judgment titled as ***Parvinder Singh versus Directorate of Enforcement, SLP (Crl.) No.12055 of 2025***, decided on 19.05.2026 has held as under:

“26. Section 223 of the BNSS deals with the examination of a complainant. The first proviso to Section 223(1) of the BNSS prohibits the Magistrate from taking cognizance of an offence, unless the accused is given an opportunity of being heard.

27. Though Chapter XVI of the BNSS lays down the procedural law dealing with complaints made to a Magistrate, we hold that the aforesaid proviso is substantive in nature, as it does not merely regulate the manner in which the proceedings are to be conducted, rather it 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, 1950. We further hold that 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. Resultantly, cognizance of an offence taken by a Court without due compliance of the aforestated proviso would be void ab initio.”

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33. Accordingly, we have no hesitation in holding that Sections 200 to 205 of the CrPC (now Sections 223 to 228 of the BNSS) would be applicable to proceedings under the PMLA.

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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.

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.”*

(V) **Re: - Nature and extent of protection to accused under Section 223(2) of the BNSS**

(i) The Hon’ble High Court of Kerala in a judgment titled as ***Suhyb P.J versus State of Kerala and ors., 2025 Law Finder (Kerala) 5236*** has held as under:

“14. True, that in ***Alavi C.*** (supra), this Court, in the context of Section 197, has held that acts of physical torture and abuse cannot be said to have reasonable connection with official duty. Here, it is pertinent to note that the wordings of Section 223(2) of BNSS are much more expansive than Section 197(1) of the Code (Section 218(1) of BNSS). While Section 218(1) contemplates sanction of the Government if the public servant is alleged to have committed any offence while acting or purporting to act in the discharge of his official duty, Section 223(2) provides an opportunity to the public servant to make his assertions with respect to any offence alleged to have been committed in course of the discharge of his official functions or duties. Undoubtedly, the words 'any offence alleged to have been committed in course of the discharge of his official functions or duties' would take



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in an excessive act committed by such person in the course of the discharge of his official functions or duties.

15. *Another vital difference between the provisions is that, in Section 218(1) only the word duty is used, whereas in Section 223(2), both duty and function are mentioned. While the expression 'public duty' refers to an obligation or responsibility imposed on a public official, the term public function refers to the activity, role or service performed by a public official or a person acting on behalf of the Government. Thus, it is apparent that the legislature has consciously used the expansive expression in Section 223(2) so as to provide additional layer of protection to public servants from prosecution based on false and frivolous complaints. Therefore, when dealing with complaints alleging commission of offence by a public servant in course of the discharge of his official function or duty, the Magistrate is bound to follow the procedure prescribed in Section 223(2) of BNSS."*

(ii) The Hon'ble High Court of Andhra Pradesh in a judgment titled as ***K Manasa versus The State of Andhra Pradesh and others, Criminal Petition No.7087/2026***, decided on 13.08.2026 has held as under:

"Section 223 of 'the BNSS.,' governs the procedure to be followed by a Magistrate before taking cognizance of an offence on a complaint. Sub- section (2) lays down a distinct pre-cognizance safeguard applicable where the complaint is against a public servant for an offence alleged to have been committed in the course of discharge of his official duties or functions: before taking cognizance, the Magistrate must call upon the public servant to furnish his assertions regarding the incident and must also call for a report containing the facts and circumstances from the officer superior to him. This safeguard is wider than the sanction requirement under Section 218(1) of 'the BNSS.,' since it uses both the expressions "duty" and "function", and extends to all persons answering the description of "public servant" under Section 2(28) of 'the BNS.,' and not merely those appointed by the Central or State Government. The expression "while taking cognizance" has been construed to cover not only the final act of cognizance but also the preceding evaluative stage at which the



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Magistrate examines the complaint, so that the safeguard cannot be bypassed by resort to Section 175(3) in a mechanical manner.”

(iii) The Hon’ble High Court of Gujarat in a judgment titled as ***Rajdipsingh Narsinh Nakum & Ors. versus State of Gujarat & Ors., R/Criminal Revision Application (Against order passed by subordinate court) No.1151 of 2026***, decided on 22.04.2026 has held as under:

“9. Here, in this matter, the learned Magistrate has issued the process under section 227 of the BNSS, 2023 without complying the provisions of sub-section (2) of section 223 of the BNSS, 2023. Though, a complaint has been made of custodial torture or mis-treatment or an assault, as provided under sub-section (2) of section 223, the provision mandates the Magistrate to hear the public servant so that he can make his own assertion as to the situation, which has been alleged by the complainant. It also becomes necessary to ask for a report from the superior officer of that of public servant, containing the facts and circumstances of the incident. It is only after an opportunity is granted to the public servant and on receiving the report from the superior officer of the public servant with regard to the facts and circumstances of the incident and the assertions made by the public servant with regard to the incident alleged, the learned Magistrate under the inquiry is required to apply the mind for taking the cognizance prior to issuance of the process under section 227 of the BNSS, 2023.”

(VI) Re: **Requirement of obtaining sanction under Section 197CR.P.C./218 BNSS in complaint/prosecution arising out of PMLA**

The Hon’ble Supreme Court in a judgment titled as ***Directorate of Enforcement versus Bibhu Prasad Acharya, etc., Criminal Appeal Nos.4314-4316 of 2024*** has held as under:

“17. Section 65 makes the provisions of the CrPC applicable to all proceedings under the PMLA, provided the same are not inconsistent with the provisions contained in the PMLA. The words ‘All other



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proceedings' include a complaint under Section 44 (1)(b) of the PMLA. We have carefully perused the provisions of the PMLA. We do not find that there is any provision therein which is inconsistent with the provisions of Section 197(1) of CrPC. Considering the object of Section 197(1) of the CrPC, its applicability cannot be excluded unless there is any provision in the PMLA which is inconsistent with Section 197(1). No such provision has been pointed out to us. Therefore, we hold that the provisions of Section 197(1) of CrPC are applicable to a complaint under Section 44(1)(b) of the PMLA.

18. *Section 71 gives an overriding effect to the provisions of the PMLA notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 65 is a prior section which specifically makes the provisions of the CrPC applicable to PMLA, subject to the condition that only those provisions of the CrPC will apply which are not inconsistent with the provisions of the PMLA. Therefore, when a particular provision of CrPC applies to proceedings under the PMLA by virtue of Section 65 of the PMLA, Section 71 (1) cannot override the provision of CrPC which applies to the PMLA. Once we hold that in view of Section 65 of the PMLA, Section 197(1) will apply to the provisions of the PMLA, Section 71 cannot be invoked to say that the provision of Section 197(1) of CrPC will not apply to the PMLA. A provision of Cr. P.C., made applicable to the PMLA by Section 65, will not be overridden by Section 71. Those provisions of CrPC which apply to the PMLA by virtue of Section 65 will continue to apply to the PMLA, notwithstanding Section 71. If Section 71 is held applicable to such provisions of the CrPC, which apply to the PMLA by virtue of Section 65, such interpretation will render Section 65 otiose. No law can be interpreted in a manner which will render any of its provisions redundant.”*

Analysis (re law)

9. A code of criminal procedure is not merely an assemblage of technical rules, it is the statutory vehicle through which the constitutional guarantees of a fair trial and speedy justice are given concrete form and effect. The procedural safeguards provided therein are designed precisely to strike a delicate equilibrium between the legitimate power of State to

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prosecute crime and the fundamental right of an individual to be protected against arbitrary, oppressive and vexatious criminal process. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (erstwhile the Criminal Procedure Code, 1973, (Cr.P.C.)) serves as the general procedural statute governing criminal proceedings across judicial forums, including (but not limited to) investigation, inquiry and trial. The relationship between this general procedural code and special penal statutes is explicitly governed by Section 4 thereof. While Section 4(1) BNSS provides that all offences under the Bharatiya Nyaya Sanhita, 2023 (BNS) shall be investigated, inquired into, and tried according to the procedure prescribed under the BNSS, Section 4(2) of BNSS extends this general procedural application to offences created under special statutory enactments, such as the Prevention of Money Laundering Act, 2002 (PMLA), subject, however, to any specific procedure or exception embodied within such special enactment. Thus, the statutory *schema* establishes a clear rule: the general provisions of the BNSS remain fully applicable to proceedings arising out of special penal statutes, save and except where the special statute contains an express, inconsistent, or overriding procedural provision.

9.1. In enacting the *PMLA*, the legislature has consciously retained the applicability of the general criminal procedural code (Cr.P.C.). Wherever the legislature deemed it necessary to depart from the general provisions as provided in the Cr.P.C., such as the specific provisions governing arrest under Section 19, search and seizure under Sections 17 and 18, or the stringent bail conditions under Section 45, it



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enacted express statutory overrides. In respect of all other procedural matters, the PMLA expressly provides that the provisions of the general criminal procedural code shall apply to proceedings arising thereunder. Section 46 of the *PMLA* explicitly mandates that the provisions of the Cr.P.C. shall apply to proceedings before the Special Court established under the *PMLA*. This legislative intent is further fortified by Section 65 of the *PMLA*, which declares that the provisions of the Cr.P.C. shall govern all proceedings under the Act, insofar as they are not inconsistent with the express provisions of the *PMLA*.

9.2. This principle of procedural confluence has been authoritatively affirmed by the Hon'ble Supreme Court. In ***Tarsem Lal*** (supra), the Hon'ble Supreme Court held that the sole statutory mode for a Special Court to take cognizance of an offence of money laundering under Section 3, punishable under Section 4 of the *PMLA*, is upon a complaint filed by an authorized officer under Section 44(1)(b) *PMLA*. The Apex Court categorically observed that once such a complaint is instituted, the proceedings before the Special Court are governed by the procedural regime under Sections 200 to 205 Cr.P.C. (now Chapter XVI of the BNSS), precisely because no provision in the *PMLA* is inconsistent with these pre-cognizance and summoning provisions. Reiterating this procedural scheme in ***Yash Tuteja*** (supra), the Hon'ble Supreme Court held that upon the filing of a complaint under Section 44(1)(b) of *PMLA*, the procedure prescribed under Sections 200 to 204 Cr.P.C. applies automatically. The Apex Court highlighted that the *PMLA* contains no overriding or repugnant provision that displaces these statutory



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provisions, and consequently, the procedural steps and pre-cognizance safeguards prescribed thereunder must be scrupulously and religiously adhered to, lest the underlying judicial proceedings suffer from an incurable procedural infirmity. Pertinently, with the enforcement of the new criminal codes on 1st of July, 2024, the procedural statute governing complaints instituted post-repeal underwent a statutory shift from the Cr.P.C. to the BNSS. In ***Kaushal Kumar Aggarwal*** (*supra*), the Hon'ble Supreme Court recognized that for complaints filed by the ED under Section 44(1)(b) *PMLA*, filed on or after 1st of July 2024, the governing procedural statute is Chapter XVI of the BNSS, comprising of Sections 223 to 227. Because Chapter XVI of the BNSS comprehensively regulates the pre-cognizance stage for all complaints instituted after the date of enforcement of the new code, the statutory safeguards embodied within Section 223 BNSS, specifically including the mandatory requirement under Section 223(2) to call for a report from a superior officer in complaints involving public servants, apply with full legislative force to complaints instituted before the Special Court under the *PMLA*.

Ergo, a conjoint reading of Section 4(2) BNSS with Sections 46 and 65 of the *PMLA* leads to an inescapable conclusion: where the *PMLA* provides a specific procedural departure, that special provision assumes primacy; where the *PMLA* is silent or contains no inconsistent directive, the general criminal procedural code (i.e. Cr.P.C./BNSS) continues to govern the field *ex proprio vigore*. In the absence of any express statutory exclusion or inconsistency within the *PMLA*, bypassing these mandatory statutory provisions under the guise of the special nature



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of the *PMLA* would run counter to Section 4(2) BNSS, violate Sections 46 and 65 of the PMLA, and subvert the binding precedents established in *Tarsem Lal* (supra), *Yash Tuteja* (supra), and *Kaushal Kumar Aggarwal* (supra).

10. Pertinently, under the statutory *schema* of the erstwhile Code of Criminal Procedure, 1973 (Cr.P.C.), the settled rule of criminal jurisprudence was that at the pre-cognizance stage of a complaint case, the prospective accused possessed no *locus standi* or right to be heard. The process was issued to the accused only after cognizance was formally taken by the court, whereupon the accused would appear and participate in the trial. However, in its legislative wisdom, and with a clear intent to make the procedure more fair and provide a *neo* ambit to the principles of natural justice, the legislature has provided for certain pre-cognizance stage rights under Section 223 BNSS, to insulate the proposed accused and public servants from unnecessary judicial entanglement arising out of frivolous, malicious, or vexatious complaints. While the first proviso to Section 223(1) BNSS establishes a general right of hearing for all proposed accused individuals before cognizance is taken, Section 223(2) BNSS creates a specialized statutory safeguard where a complaint is instituted against a public servant for an offence alleged to have been committed in the *discharge of his official functions or duties*. Section 223(2) contains an unequivocal statutory prohibition, mandating that no Magistrate or Court shall take cognizance of a complaint against a public servant unless two cumulative conditions are fulfilled: *firstly*, the public servant is afforded an opportunity of making



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assertions regarding the allegations [Section 223(2)(a) BNSS]; and *secondly*, a factual report is called for and received from the departmental superior officer regarding the facts and circumstances of the case [Section 223(2)(b) BNSS]. As highlighted in **Clause 3.16** of the **247th Report**, this dual requirement was specifically crafted to protect public servants from retaliatory or unsubstantiated litigation, reduce the backlog of false complaints, and ensure that administrative machinery is not paralyzed by protracted, bad-faith legal proceedings.

10.1. The substantive character of one of these pre-cognizance safeguards (as enshrined under Section 223(1) BNSS), was authoritatively examined by the Hon'ble Supreme Court in **Parvinder Singh** (supra), whereby the Hon'ble Apex Court held that the right enacted thereunder is not a mere procedural rule regulating the manner of court proceedings, but a substantive statutory right directly rooted in the constitutional guarantee of a fair trial enshrined under Article 21 of the Constitution of India. The Hon'ble Court observed that where a statute employs mandatory negative language, such as "*shall not take cognizance*", it leaves no room for judicial discretion but makes the compliance a condition precedent to the exercise of jurisdiction. Consequently, the Hon'ble Supreme Court categorically held that where cognizance is taken after 1st of July, 2024, without complying with the imperative requirement of Section 223(1), the order taking cognizance is *void ab initio* and legally non-est. While, the *dicta* in **Parvinder Singh** (supra) was in relation to the safeguard contained in Section 223(1) BNSS, however, the *ratio decidendi* thereof will apply *ex proprio vigore*



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to the non-compliance with the procedure contained in Section 223(2) BNSS in respect of public servants, as the statutory commands under the first proviso to Section 223(1) BNSS and Section 223(2) BNSS are identically worded insofar as both employ the mandatory word '*shall*'. Significantly, the ruling in *Parvinder Singh* arose directly out of a prosecution under the *PMLA*, thereby conclusively settling the law that the pre-cognizance safeguards under Chapter XVI of the BNSS, including Section 223(2) (in cases where accused is a '*public servant*'), apply *ex proprio vigore* to complaints filed before the Special Court under Section 44(1)(b) of the *PMLA*.

It is further pertinent to note herein that while ordinary procedural irregularities under the procedural code (BNSS) may be curable, the complete omission to adhere to a mandatory, substantive safeguard conferring a statutory right upon an accused individual invalidates the entire pre-cognizance exercise. The inescapable legal conclusion, therefore, is that the protective safeguards under Section 223(2) BNSS are fully applicable to *PMLA* proceedings involving public servants, and any order taking cognizance passed in defiance or non-compliance of Section 223(2) BNSS is fundamentally flawed, jurisdictionally invalid, and unsustainable in the eyes of the law.

11. Having addressed the mandatory applicability of the statutory safeguards enshrined under Section 223(2) BNSS to complaints and proceedings initiated under the *PMLA*, this Court deems it pertinent to now delve into a subsequent question of cardinal legal importance, i.e. *whether the procurement or grant of sanction for prosecution under*



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Section 218 BNSS (corresponding to Section 197 Cr.P.C.) dispenses with or subsumes, or otherwise satisfies the distinct statutory mandate of calling for a factual report from a superior officer as mandated by Section 223(2)(b) of BNSS?

Pertinently, upon a meticulous perusal of the statutory *schema*, this Court finds itself unable to subscribe to the proposition that the compliance with the provisions of Section 218 BNSS/Section 197 Cr.P.C. acts as a substitute for, or obviates the requirement of, a report under Section 223(2)(b) of BNSS, for both provisions, though sharing a common protective intent to shield public servants from frivolous, vexatious, or mala fide prosecutions, operate in entirely distinct domains; embody separate and independent safeguards designed for distinct classes of public servants and the disparate purpose each provision seeks to achieve; the difference in authority responsible for compliance; the disparate scope of material and substance required to satisfy both the requirements. Furthermore, the principles governing the rule of interpretation of a protective/beneficial provision(s), dictate that both are distinct and separate provisions and compliance with one will not obviate the necessity to comply with the mandatory provision provided for under the other.

11.1. Pertinently, the protection provided under Section 218 BNSS/Section 197 Cr.P.C., which is applicable to a complaint under Section 44(1)(b) of the PMLA [vide ***Bibhu Prasad Acharya*** (supra)], is an exclusive, conditional shield reserved strictly for a narrow category of public servants, *namely*, those who are not removable from office save by



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or with the sanction of the Government, and who are alleged to have committed an offence while acting or purporting to act in the “*discharge of their official duty*”. In stark contrast, Section 223(2) BNSS employs a much broader statutory protection, extending its protection to complaints against all the individuals falling within the definition of a “*public servant*” as provided for in Section 2(28) of the BNS, irrespective of their designation, rank or the mode of their removal from service/office. *Ergo*, interpreting the two as interchangeable would result in an impermissible anomaly for public servants who fall outside the purview of Section 218 BNSS yet remain protected under Section 223(2) BNSS. Furthermore, the operational breadth of these safeguards differs significantly; while the protection under Section 218 BNSS/197 Cr.P.C. is confined strictly to acts performed while acting or purporting to act “*in the discharge of official duty*”, Section 223(2) confers a wider protection by deliberately employing the phrase “*in the course of discharge of his official functions or duties*”. While noting this expansive protection under Section 223(2) BNSS, the Hon’ble Kerala High Court in ***Suhyb P.J.*** (supra) observed that while the expression “*public duty*” refers only to an obligation or responsibility imposed on a public official, the term “*public function*” would also encompass any activity, role or service performed by the public servant acting on behalf of the executive. This very distinction has recently been appreciated by the Hon’ble Andhra Pradesh High Court in ***K. Manasa*** (supra), and the Hon’ble Gujarat High Court in ***Rajdipsingh Narsinh Nakum*** (supra) wherein, it has been observed that the safeguard provided under Section 223(2) is wider than



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the sanction required under Section 218(1) of the BNSS, since Section 223(2) uses both the expressions, “*duty*” and “*function*”, and extends to all persons answering the description of a “*public servant*” as provided under Section 2(28) of the BNS, and not merely those appointed by the Central or State Government. It is worthwhile to note herein that in the **Bill No. 122** (supra), clause 210(3), (which corresponds to Section 223(2) BNSS) employed the phrase “*in the discharge of official duties*”, however, as noted above, in the final enacted statute, in the form of Section 223(2) BNSS, the legislature has deliberately expanded the operation of the safeguard enumerated therein, by employing the phrase “*in the course of discharge of his official functions or duties*”; thereby conveying the explicit legislative intent to extend the safeguards (contained therein) to activity(s) falling within the scope of “*official functions*” also, which extends across a broad spectrum of administrative acts, *vis-à-vis*, the acts encompassed within ‘*public duty*’.

11.2. More-so, the two provisions also differ fundamentally in respect of the authority tasked with the compliance thereof. The authority responsible for granting *sanction* under Section 218 BNSS is the Central or State Government (or the authority competent to remove the public servant (concerned) from office), *exercising executive sovereign power to determine the overall political and administrative expediency of prosecution*. Conversely, the officer called upon to submit a report under Section 223(2)(b) BNSS is (the immediate reporting) superior within the administrative hierarchy of the concerned department. This superior officer acts not as an adjudicator of prosecution, but as an internal

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departmental source of factual information, records, and surrounding circumstances concerning the alleged incident. This difference in the authority tasked with the respective compliance(s), directly impacts the qualitative nature of the material placed before the Court. An order of *sanction* under Section 218 BNSS represents an executive determination expressing permission to prosecute, arrived at upon evaluating the investigative material assembled by the concerned law enforcement agency, and it operates as an absolute threshold bar to jurisdiction, without which a court suffers from an incurable disability to take cognizance. On the other hand, the report under Section 223(2)(b) BNSS serves as a purely informational and fact-finding purpose by placing an objective, departmental account of the factual narrative directly before the Magistrate or the Court concerned. It does not, by itself, constitute a grant or refusal of permission to prosecute.

11.3. Furthermore, the impact of these dual safeguards on the judicial discretion to be exercised by the Magistrate or the Court concerned, further underscores their independent, non-overlapping existence. Under *Section 218 BNSS*, the jurisdiction of the Court is entirely contingent upon prior *sanction*, in the absence of which judicial proceedings remain dormant. However, under *Section 223(2)(b) of BNSS*, the Magistrate/Court is merely required to receive and consider the report of the superior officer prior to taking cognizance. The Magistrate/Court is in no way bound by the findings, opinions, or conclusions contained in such a report, retaining unfettered judicial discretion to independently



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evaluate the record and determine whether taking cognizance is warranted in law.

11.4. To accept the proposition that procuring *sanction* under *Section 218 BNSS* dispenses with the necessity of calling for a factual report under *Section 223(2)(b) BNSS* would also do violence to the established rules of statutory interpretation and ignore the clear legislative trajectory of the *subject provision(s)*. The legislative genesis of *Section 223(2)(b) BNSS* yields unequivocal evidence of conscious and deliberate legislative intent to create an independent statutory safeguard. In the ***Bill No. 122***, the corresponding provision (of *Section 223(2) BNSS*) was contained in *Clause 210(3)*. During the legislative scrutiny, the ***247th Report***, vide *Clause 3.16* thereof, explicitly noted that *Clause 210(3)* (of ***Bill No. 122***) constituted a novel addition without any corresponding antecedent in the Cr.P.C., 1973, and further cautioned that such a mandatory pre-cognizance report from a superior officer carried the potential for administrative delay and misuse. Significantly, despite these explicit notes of caution from the Parliamentary Committee, the legislature in its supreme wisdom chose not only to retain the provision, but (as noted hereinbefore) also expanded the operation of the safeguard. While the initial draft ***Bill No. 122*** employed the narrower phrase “*in the discharge of official duty*”, the final enacted text of *Section 223(2) BNSS* employs the phrase “*in course of the discharge of his official functions or duties*” This conscious and deliberate legislative expansion, having been resorted to while being fully cognizant of the pre-existing *sanction* requirement under *Section 218 BNSS/Section 197 Cr.P.C.*, proclaims a



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firm legislative intent, to construct an additional, non-negotiable safeguard to shield *public servant(s)* from frivolous, vexatious, or retaliatory complaints, thereby to nip in the bud spurious litigation and preventing the clogging of judicial dockets with speculative criminal proceedings. This aspect of construing this protective provision is yet reinforced by its purposive interpretation in accordance with the celebrated principle of statutory interpretation; namely ***Heydon's Rule*** of Interpretation (***Mischief Rule of Interpretation***); which has met with favour from the Hon'ble Supreme Court in the judgments of ***Bengal Immunity Co. Ltd.*** (supra) and ***RMD Chamarbaugwalla*** (supra).

11.5. The explicit statutory command embodied in Section 223(2) BNSS, that the Magistrate/Court "*shall not take cognizance*" without receiving a report from the superior officer, underscores its mandatory character. While it is a settled rule of statutory construction that the word "*shall*" does not invariably render a provision mandatory, it is equally established that where the statutory language is plain, precise, and unambiguous, courts must adhere to the '*Literal or Golden Rule of Interpretation*'. As observed by a Five Judge Bench of the Hon'ble Supreme Court in ***L.V.A. Dixitulu*** (supra), that where the language and phraseology employed by the legislature is plain and unequivocally proclaims the legislative intent, the court must give full effect to it irrespective of the perceived consequences. This principle was further affirmed by the Hon'ble Supreme Court in the case of ***Laxmi Narain Dhut*** (supra), wherein the Hon'ble Apex Court reaffirmed that interpreting a statute in strict alignment with demonstrated legislative



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intent is the most logical and sound rule of construction. Given that the legislature has enacted Section 223(2) BNSS as an additional layer of protection alongside the pre-existing safeguard under Section 218 BNSS, it is not for the courts to rewrite the statute to hold that one statutory safeguard swallows or satisfies the other.

11.6. It is a cardinal and immutable rule of statutory interpretation that a statute must be read as a whole and construed in a manner that gives meaningful operation to every clause and word as expressed in the maxim *ut res magis valeat quam pereat* (i.e. the thing may rather have effect than perish). The Court must resolutely lean against any interpretive paradigm which would, by its operation, render a legislative enactment/provision otiose, unworkable, or reduce it to a state of utter futility, and it cannot be allowed to adopt a construction that renders a distinct legislative provision meaningless, redundant, or nugatory. Any interpretative approach that conspicuously diverges from the discernible legislative intent, as evinced through the plain text, must be eschewed as has been observed by the Hon'ble Supreme Court in *S. Teja Singh* (supra), *Shri. Gurudasmal* (supra), *Tinsukhia Electric Supply* (supra) and *Hindustan Bulk Carriers* (supra). Vide; *Craies on Statute Law*, p. 90 and *Maxwell on The Interpretation of Statutes, Tenth Edition*, pages 236-237;

"A statute is designed", observed Lord Dunedin in Whitney v. Commissioners of Inland Revenue (2), "to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable".



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Ergo, to hold that obtaining a *sanction* under Section 218 BNSS/Section 197 Cr.P.C. dispenses with the requirement of a report under Section 223(2)(b) of BNSS would in effect obliterate a deliberate safeguard provided in the statute. Such an interpretation would impermissibly truncate the statutory obligation imposed upon the Magistrate/Court by the statute. *Ergo*, compliance with the requirement of sanction under Section 218 BNSS/Section 197 of Cr.P.C. cannot, by any stretch of legal interpretation, substitute for, subsume, or extinguish the distinct and mandatory statutory safeguard created under Section 223(2)(b) of BNSS. The two provisions operate as independent, non-overlapping protections/safeguards of criminal procedure, and both must be given full effect in letter and spirit.

12. There is another aspect, *namely*, vital aspect of the matter that warrants consideration at this junction.

By virtue of *Section 223(2) of the BNSS*, in complaints preferred against public servants acting in the discharge of their official functions or duties, the Magistrate or Court is precluded from taking cognizance without calling for and receiving a factual report from the officer superior to such public servant. Pertinently, while the statute mandates the receipt of such a report prior to taking cognizance, it suffers from a conspicuous legislative omission, namely, the absence of a prescribed timeline within which the superior officer is required to furnish the said report. While this Court is acutely conscious of the constitutional boundaries governing the judicial branch, recognizing that the Court cannot arrogate to itself the powers of the legislature to enact



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laws or fill statutory lacunae under the guise of interpretation and ordinarily, the task of setting procedural time-limits lies strictly within the domain of statutory enactment, however, it is an equally well-settled principle of law that procedural lacunae cannot be permitted to subvert the administration of justice or render statutory mechanisms illusory through indefinite pendency. Where statutory silence risks stalling the judicial process and violating the fundamental right to a speedy trial, a Constitutional Court, in exercise of its inherent and constitutional jurisdiction, is fully empowered to lay down interim guidelines to bridge the statutory void, pending appropriate legislative intervention. A profitable reference in this regard can be made to one of the seminal works of Justice Benjamin N. Cardozo, namely, ***‘The Nature of the Judicial Process (1921)’***, which has also met with approval from the Hon’ble Supreme Court, in a five Judge Bench judgment of Hon’ble Supreme Court in ***Anoop Baranwal vs. Union of India 2023(6) SCC 161***, relevant whereof reads thus:

“The Method of Sociology - The Judge as a Legislator.

... No doubt the limits for the judge are narrower. He legislates only between gaps. He fills the open spaces in the law. How far he may go without travelling beyond the walls of the interstices cannot be staked out for him upon a chart. He must learn it for himself as he gains the sense of fitness and proportion that comes with years of habitude in the practice of an art. Even within the gaps, restrictions not easy to define, but felt, however impalpable they may be, by every judge and lawyer, hedge and circumscribe his action. They are established by the traditions of the centuries, by the example of other judges, his predecessors and his colleagues, by the collective judgment of the profession, and by the duty of adherence to the pervading spirit of the law.

...The process, being legislative, demands the legislator's wisdom.



... Customs, no matter how firmly established, are not law, they say, until adopted by the courts. Even statutes are not law because the courts must fix their meaning. That is the view of Gray in his "Nature and Sources of the Law." "The true view, as I submit," he says, "is that the Law is what the Judges declare; that statutes, precedents, the opinions of learned experts, customs and morality are the sources of the Law." So, Jethro Brown in a paper on "Law and Evolution," tells us that a statute, till construed, is not real law. It is only "ostensible" law, Real law, he says, is not found anywhere except in the judgment of a court...

..They have the right to legislate within gaps, but often there are no gaps. We shall have a false view of the landscape if we look at the waste spaces only, and refuse to see the acres already sown and fruitful...

..The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life." Wide enough in all conscience is the field of discretion that remains."

12.1. At this juncture, it would be apposite to delve into the nature, scope and ambit of powers of the High Court under Section 528 of BNSS, 2023. Alluding to the provisions of Section 561A of Cr.P.C., 1898 and Section 482 of Cr.P.C., 1973 & juxtaposing with Section 528 of BNSS, 2023 unequivocally reflects that the legislature has chosen not to alter this salutary provision *may* alter any word therein. This, by itself, establishes this provision as an imminent attribute, even ineffaceable, and an enduring doctrine of inherent powers of the High Court. For over a century now, despite overhauling of laws twice during this period, the latest being BNSS of 2023, this provision remains untouched. Section

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528 of BNSS, 2023 is, in fact, reiteration of the statutory recognition of the doctrine of inherent jurisdiction of a High Court. This doctrine received statutory recognition, for the first time, when Section 561-A was inserted in the Code of Criminal Procedure Code of 1898 by way of the Code of Criminal Procedure (Amendment Act), 1923. By way of introduction of Section 561-A in Cr.P.C., 1898, the legislature recognized the existence of inherent powers in a High Court and provided that nothing in the Code can be deemed to limit the inherent powers of a High Court to make such order(s) as would be necessary to give effect to any order under the Code or to prevent abuse of process of any Court or to otherwise secure the ends of justice. The Hon'ble Supreme Court in a catena of judgments, while dealing with the ambit of inherent powers of a High Court, has held that the provision of inherent powers in the Code does not confer any new power(s) to a High Court; it only provides that the power(s) which a High Court already inherently possesses, shall be preserved and a provision has been inserted into the statute book *lest* it would be misconstrued that only those powers are possessed by a High Court which are expressly conferred by the Cr.P.C./BNSS. In essence, the provision for inherent power(s), refers to the residuary plenary powers of a High Court to do justice, and avoid abuse of process of Court. It is notable that such inherent powers, which have received statutory recognition at the end of legislature, empowers a High Court to exercise such inherent jurisdiction not only in respect of proceedings before it but also in respect of proceedings pending before the Subordinate Courts.



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Ergo, to allay/obviate the apprehension that calling for a report under Section 223(2)(b) BNSS may engender unwarranted delay in the progress of the trial and to ensure that judicial process is not rendered subservient to administrative inertia or recalcitrant approach, this Court deems it appropriate to issue direction(s) governing the time frame for submission of report under Section 223(2)(b) BNSS.

13. As a sequitur to prevenient rumination, the following postulates emerge:

- (I) By virtue of *Section 4(2) BNSS*, read alongside *Sections 46 and 65 of the PMLA*, the procedure governing Criminal complaints provided for under Chapter XVI of the BNSS, including *Section 223(2) BNSS*, applies *ex proprio vigore* to prosecution complaint(s) filed before the Special Court under *Section 44(1)(b) PMLA*.
- (II) The statutory safeguards provided under *Section 223(2)* of BNSS; requiring the Court to afford the proposed accused public servant an opportunity to make assertions & to obtain a factual report from his/her superior officer before taking cognizance; are mandatory, condition-precedent and any order taking cognizance or issuing process without compliance thereof is jurisdictionally invalid, *void-ab-initio* and *non-est* in the eyes of the law.
- (III) The grant of sanction for prosecution under *Section 218 BNSS* (erstwhile *Section 197 Cr.P.C.*), does not dispense with, subsume or satisfy the distinct statutory requirement of



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calling for and receiving a factual report from the superior officer in terms of *Section 223(2)(b) BNSS*.

(IV) To prevent inordinate delay and ensure that judicial proceedings are not rendered subservient to administrative inertia, it is ordained thus:

- a. Every superior officer from whom a factual report is sought under *Section 223(2)(b) of BNSS*, shall furnish the same to the court concerned within a strict period of thirty (30) days from the date of receipt of the court's order.
- b. The court concerned may, in its discretion, extend this period by a maximum of fifteen (15) additional days, provided the superior officer shows sufficient and compelling cause for the inability to submit the report within the initial thirty-day period.
- c. In case of failure or neglect on part of such Superior Officer to submit the report within the stipulated or extended period, the court shall be fully empowered to initiate appropriate action(s), including penal and coercive measure(s), against such erring superior officer in accordance with law.

Analysis re: facts

14. Reverting to the factual *milieu* of the *petition in hand*, it is indubitably clear that the petitioner (herein) is a public servant and is sought to be prosecuted by the respondent-ED by way of



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ECIR/prosecution complaint in question. A perusal of the *impugned order* reflects that the petitioner (herein) was afforded an opportunity of hearing before passing of this order but no report from the superior officer under Section 223(2)(b) of the BNSS, 2023 was sought for. In view of the analysis of the legal position in the preceding paragraphs of this judgment, learned Special Judge, Gurugram ought to have sought for a report under Section 223(2)(b) of the BNSS, 2023.

15. The objection raised by the learned counsel for the respondent to the effect that the petitioner is precluded from agitating the plea regarding the non-compliance with Section 223(2) BNSS before this Court for the first time, owing to its omission before the learned Special Court, does not commend itself to this Court and stands rejected.

It is an unexceptional and settled proposition of law that a question of law *proper*, which goes to the root of the jurisdictional competence and can be determined on the basis of undisputed facts already existing on record, can be entertained and adjudicated by the High Court directly for the first time in exercise of its inherent jurisdiction under Section 528 BNSS/482 Cr.P.C. An age old adage as enunciated by Lord Watson in ***Connecticut Fire Insurance Co. Vs. Kavanagh, (1892) A.C. 473***, which has also met with approval by a Three-Judge Bench of the Hon'ble Supreme Court in ***Yeshwant Deorao Vs. Walchand Ramchand, 1951 AIR Supreme Court 16***, reads thus:

“When a question of law is raised for the first time in the court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain the plea. The



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expediency of adopting that course may be doubted when the plea cannot be disposed of without deciding the nice questions of fact in considering which the Court of ultimate review is place in a much less advantageous position than the Courts below.”

Pertinently, the invocation of inherent powers is designed precisely to prevent the abuse of process of any court and to secure the ends of justice, uninhibited by the technicalities of procedure, particularly, wherein a vital statutory safeguard has not been complied with. In the facts and circumstances of the instant case, the omission on part of the learned Special Court pertains to non-compliance with a mandatory statutory condition precedent provided under Section 223(2) BNSS, which strikes at the very root of the jurisdictional competence of the learned Special Court to take cognizance and issue process. The question involved does not require any fresh factual inquiry or adducing of additional evidence and rather the Special Court record available before this Court is self-evident that the procedure prescribed under Section 223(2) was not followed. Furthermore, the proceedings before the learned Special Court are, admittedly, still at the pre-trial stage, and thus, the objection raised by learned counsel for respondent, deserves to be rejected.

16. In view of the prevenient ratiocination, it is ordained thus:

(i) The *impugned order* (order dated 23.04.2026 (passed by learned Special Judge, PMLA, Gurugram), is quashed and the learned Special Judge, (PMLA), Gurugram, is directed to pass a fresh order in accordance with law after complying with the provisions of *Section 223(2)(b)* of the BNSS, 2023.



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- (ii) Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the trial Court shall proceed further, in accordance with law, without being influenced with this order.
- (iii) Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

October 27, 2026
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No