

**IN THE COURT OF XIV ADDITIONAL SPECIAL JUDGE FOR CBI CASES,
CHENNAI – 104.**

**Present: Thiru. J. Omprakash, L.L.M., P.G.D.H.R.M.,
XXIV Additional City Civil and Sessions Judge,
XXIV Additional City Civil and Sessions Court,
(CBI Cases relating to Banks and Financial Institution Scams),
Allikulam, Chennai-03.
XIV Additional Special Court for CBI Cases, Chennai (FAC).**

Thursday, the 23rd day of July 2026

**Spl.C.C.No.12/2024
in
ECIR/CEZO-I/62/2022**

The Assistant Director,
Directorate of Enforcement,
Government of India, Chennai Zone-I,
5th and 6th Floor, BSNL Building,
Kushkumar Road, Nungambakkam,
Chennai – 600 034.

... Petitioner / Complainant

.Vs.

1. Shri.J.Hariharan,
S/o. S.Jayaraman,
R/o. Flat No. 303, Block – F,
Taisha AIS Apartment Complex,
West Natesan Nagar,
Virugambakkam, Chennai – 600 092.
2. Shri.I.Kuppuraj,
S/o. C.Iyyavelu,
R/o. No. 496, 23rd Arulappa street,
GKM Colony,
Jawaharnagar,
Chennai – 600 082.
3. Shri.R.P.Jayaprakash,
S/o. Padmanabhan,
R/o. No.7/24, School Street,
Mulammaddur,
Muddur, Thiruvallur,
Tamilnadu – 631 206.

4. Smt. S. Asha

D/o. Sivanandan,

R/o. Flat No. B-1004,

Brigade, Yelahanka,

Bengaluru, Karnataka – 560 064.

...Respondents 1-4 /Accused 1- 4

This Calendar Case is coming on this day before this court for hearing in the presence of Mr.N.Ramesh, Special Public Prosecutor for Petitioner/Complainant and M/s.T.S.Kanmani, S.M.Nandhie Devhan, E.Sundara Kumar, B.Koteswara Rao Learned Counsels for Respondent-1/ Accused-1, M/s.R.Ashwin & M.Raja, Learned Counsels for Respondent-2/ Accused 2, M/s.S.Sivagurunathan, Learned Counsel for Respondent-3/ Accused 3, M/s.Senthil kumar, Ram Kumar, Learned Counsel for Respondent-4 / Accused 4 and and upon hearing the arguments on both sides, upon perusal of the material records of this case and the matter having stood over for consideration till this date, this court delivered the following :

ORDER

The above case is filed by the ED as against the Respondents / Accused 1 to 4 U/s. 3 r/w. 4 of PML Act. On perusal of records, it is the allegation in the predicate offense that one M/s. LNS Financial Service has collected unregulated deposits from the public at large and the accused acted as an agent for the said company. However, the amount collected by the said company could not be repaid to the investors and the amount was swindled by the Directors of the company. Therefore, the said case was registered in FIR No. 16 dated 04.08.2022. After investigation, the predicate agency has filed final report against 19 accused before the Hon'ble Special Court under TNPID Act under sections 120(B), 409, 420 of IPC, Section 5 of TNPID

Act, 1997, Sec. 3, 5, 21(1), 21(2), 21(3), 23 and 25 of BUDS Act, 2019. As the final report filed by the predicate agency is having a scheduled offense of PML Act, the ED has registered an ECIR bearing No.ECIR/CEZO-I/62/2022.

2. In the investigation, the Petitioner/ED has found that the Respondent/Accused was involved in the Money Laundering Offense, therefore, a Complaint was filed against the accused before the court of the Hon'ble Principal Judge, City Civil Court, Chennai, on 03.06.2024. The Hon'ble Principal Judge Chennai has taken cognizance of the case for the commission of the offense U/s. 3 of PMLA, 2002, punishable U/s. 4 of PMLA, 2002 on 05.08.2024. After this, the Hon'ble Principal Judge, City Civil Court, Chennai, has transferred the case to the Hon'ble Principal Special Court for CBI Cases, Chennai, which was again transferred to this court.

3. In this case, the accused 1, 2, 3, and 4 have filed the discharge application in CrI.M.P.Nos. 8362/2024, 386/2025, 652/2025, and 651/2025, respectively. In the said application, the counter was also filed by the ED. In the course of the inquiry, in the said application, the Learned Senior Counsel appearing for A2 and the learned counsel for the other accused have raised various grounds to discharge the accused from the present case.

4. Among the various arguments presented by the Learned Senior Counsel for Accused 2, one important point raised is that the Hon'ble Principal Judge of the City Civil Court, Chennai, did not adhere to the first proviso of Section 223 of the BNSS

when taking cognizance of this case. Specifically, the Hon'ble Court failed to provide the Accused with an opportunity for a hearing prior to taking cognizance. Consequently, all counsels unanimously asserted that the cognizance taken by the Hon'ble Court is invalid, accordingly the subsequent proceedings is also vitiated, is the contention of the Learned Counsel for the Accused.

5. As the learned senior counsel for the accused has raised an important ground that goes to the root of this case, this court has informed all the counsels that, at first, this court will decide the following question before addressing the grounds of discharge. They are as follows :

(i) Whether the section 223 of BNSS will apply to the present case?

(ii) If the answer to the said question is affirmative. Whether it is mandatory to comply the said section.

6. For convenience this court proceed to answer the said above said question separately.

(i) Whether the section 223 of BNSS will apply to the present case ?

This question is no more Res integra as our Hon'ble Supreme Court in ***Kushal Kumar Agarwal Vs. Directorate of Enforcement*** has categorically held that

..... 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 Cr.P.C. This view has been taken by this court in the cases of Yash Tutja Vs. Union of India and others and Tarsem Las Vs. Enforcement Directorate. 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....

7. The Hon'ble Supreme Court of India, in the above said judgment has categorically held that if the complaint is filed after 01.07.2024 then BNSS will apply to the complaint submitted by the ED.

8. Bearing the said principle in mind, when this court perused the records, it is evident that though the complaint was filed on 03.06.2024, the cognizance was taken by the Hon'ble Principal Judge, City Civil Court, Chennai only on 05.08.2024. As the cognizance was taken after the BNSS came into force, the provisions of BNSS will apply to this case as well. *Moreover, our Hon'ble Supreme Court, in yet another judgment in Parvinder Singh Vs. Directorate of Enforcement*, also held that even though the complaint was filed before the BNSS came into force, if the cognizance is taken when the BNSS is in force, then the provisions of BNSS will apply to the case. By following the principle laid down by the Hon'ble Supreme Court in the present case, this court comes to the conclusion that the provisions of BNSS will apply to the present case.

(ii) If the answer to the said question is affirmative. Whether it is mandatory to comply the said section ?

9. As this court for the reason stated above held that BNSS will apply to the present case. Now coming to the next question. As the Learned Senior Counsel for the accused has stated that the proviso of Section 223 of BNSS is not complied while

taking cognizance, then it is necessary to refer the *section 223 of BNSS* . For easy reference the said section is extracted below :

“Sec. 223(1) of BNSS - Examination of Complaint :-

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 further 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.

Provided further that in case of a complaint against a public servant, the Magistrate shall comply with the procedure provided in section 217.

10. On perusal of section 223 of BNSS proviso to sub section (1), it has been categorically stated that **“no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard”**. Admittedly in this case on perusal of records, no opportunity were given by the Hon’ble Principal Judge, City Civil Court, Chennai to the accused as per section 223

of BNSS while taking cognizance of the offense.

11. As this court based on records come to the conclusion that the court has not complied the section 223 of BNSS proviso to sub section (1), then this court has to necessarily state about the consequence for not complying the section 223 of BNSS. This question is also no more a *Res Integra* as our *Hon'ble Supreme Court in the Judgment in Tutu Ghosh Vs. Enforcement Directorate* has answered to the said question. *For easy reference, the questions raised by the Hon'ble Supreme Court and the answers given by the Hon'ble Supreme Court is extracted below :*

<i>Q.No.1.</i>	<i>Whether violation of the first proviso to section 223, BNSS vitiates the order of taking cognizance and consequential proceedings.</i>
<i>Ans:</i>	<i>Accordingly, this issue is answered in the affirmative, holding that the denial of opportunity of hearing to the accused persons/petitioners prior to taking cognizance under section 210, BNSS is fatal to such cognizance and vitiates the order of cognizance itself, along with the subsequent proceedings undertaken in pursuance thereof.</i>
<i>Q.No.2.</i>	<i>Whether the accused has a burden to show "prejudice" and "miscarriage of justice" to vitiate an order taking cognizance on the ground of depriving the accused of pre-cognizance opportunity of hearing.</i>
<i>Ans:</i>	<i>Accordingly, this court is of the firm view that the denial of the right of prior hearing, as enumerated in the first proviso to section 223 of the BNSS, is sufficient to vitiate the order taking cognizance, without any further requirement on the part of the accused to prove prejudice and/or miscarriage of justice. In fact, the very denial of the right constitutes the prejudice and miscarriage of justice.</i>

12. Moreover, not only by the said judgment the Hon'ble Supreme Court has

held that the cognizance taken by the court without giving an opportunity to the accused is invalid, in the following judgment the Hon'ble court has held the same.

They are as follows :

1) Kushal Kumar Agarwal Vs. Directorate of Enforcement

2) Parvinder Singh Vs. Directorate of Enforcement

13. On perusal of the above-mentioned principle laid down by the Hon'ble Supreme Court, it has been held by the Hon'ble Supreme Court that the denial of the opportunity of hearing of the accused as per section 223 of BNSS, proviso to sub-section (1), before taking cognizance is fatal to such cognizance and vitiates the order of cognizance itself and the further proceedings thereof.

14. If the said principle is applied to the present case, then the cognizance order and all further proceedings will become vitiated. As the present case is at the infant stage, i.e., of framing charges only, this court at this stage itself wants to set right the proceedings.

15. Curative :-

The Learned Senior Counsel for the accused has argued that if the court has held that Section 223 of BNSS was not complied with by the Hon'ble Court, then the order has to be set aside by this court, and the case has to be forwarded again to the Hon'ble Principal Judge, City Civil Court, Chennai, to take cognizance afresh. This is the contention put forth by the Learned Senior Counsel for the accused.

16. Though this court, for the reasons stated above, has held that the cognizance taken by the Hon'ble Principal Judge, City Civil Court, Chennai, on 05.08.2024, is incorrect in view of the judgment of the Hon'ble Supreme Court, however the contention put forth by the Learned senior counsel for the accused to again forward the matter to the Hon'ble Principal Judge, City Civil Court, Chennai, to take cognizance afresh is not necessary.

17. This is for the reason that, on perusal of section 43 of PML Act it has been stated that the Central Government in consultation with the Hon'ble Chief Justice of High Court shall for trial of offense punishable under section 4 of the Act, by notification shall designate the One or more Courts of Sessions as a Special Court to try the offense of PMLA. Further more on perusal of section 44 of PML Act it has been categorically stated that the Special Court shall take cognizance of the offense under section 3 of PML Act without the accused being committed for the trial. For easy reference both the sections is extracted below :

Section 43(1) of PML Act :-

The Central Government in consultation with the Chief Justice of the High Court, shall, for trial of offence, be punishable under section 4, by notification designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Section 44(b) of PML Act :-

A Special Court may, [x x x] upon a complaint made by an authority authorized in this behalf under this Act take cognizance of offense 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;

18. It is necessary to state that in conformity of section 43 of PML Act, the Ministry of Finance has issued a notification in S.O.372(E) dated 05.02.2016. On perusal of the said notification it is evident that in the city of Chennai the Hon'ble Principal Judge, City Civil Court, Chennai, the Hon'ble XII Additional Special Court for CBI Cases, Chennai, the Hon'ble XIII Additional Special Court for CBI Cases, Chennai, the Hon'ble IX Additional Special Court for CBI Cases, Chennai, the Hon'ble Principal Special Court for CBI Cases (VIII Additional City Civil Court), Chennai and the Hon'ble XIV Additional Special Court for CBI Cases, i.e., this Court were designated as a Special Court to deal with the cases filed under Prevention of Money Laundering Act, 2002.

19. On perusal of the said notification, it is evident that the above-mentioned courts are on par to try the cases under the PML Act. Therefore, by virtue of the said notification, as all the courts are on par to deal with the cases under the Prevention of Money Laundering Act, 2002, this court has also have the power to decide about taking of cognizance of the PMLA. In view of the said notification, there is no necessity to forward the present case again to the Hon'ble Principal Judge, City Civil Court, Chennai to decide afresh about the taking of cognizance.

20. Further, as per the section 44 of PML Act, as stated above, the Special Court can receive a complaint submitted by the authority under the Act, without the accused being committed for trial. When that being the case, as this court is designated as a Special Court to deal with the PMLA cases, as per the above said notification, then this court has every power to receive the complaint filed by the authority.

21. In that event, this court treats the present complaint is originally filed before this court. As the accused are already appearing before this court, the notice to the accused is dispensed with, and this court hereby directs the accused, as per section 223 of BNSS proviso (1), to state their objection with regard to the taking of cognizance of the complaint by this court in the next hearing of this case. As this court is proceed to decide about taking of cognizance, afresh than the case has to be numbered as CrI.M.P. However, due to administrative reason the present case no is retained. ***Call on 19.08.2026***

Dictated directly to the steno-typist, and typed by her directly in my chamber desktop and corrected and pronounced by me in open court this the 23rd day of July 2026.

Date of uploading : 23.07.2026

**XXIV Addl. City Civil & Sessions Judge,
XIV Addl. Special Court for CBI Cases (FAC),
Chennai.**

**Fair/ Draft Order
in**

Spl.C.C. No.12/2024

Date : 23.07.2026

**XIV Addl. Special Court for CBI Cases,
Chennai - 104.**