

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

CRM(M) No.329/2025

Anil Kumar Yadav

..... Petitioner (s)

Through :- Mr. Asheesh Singh Kotwal
Advocate.

V/s

Directorate of Enforcement through its
Assistant Director 5A/C Green Belt Park
Gandhi Nagar, Jammu

.....Respondent(s)

Through :- Mr. Vishal Sharma DSGI.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1 Through the medium of present petition, the petitioner has challenged order dated 30.09.2024 passed by the learned Special Judge, Anti Corruption (CBI), Jammu ('hereinafter referred to as the "Special Judge") whereby the learned Special Judge has taken cognizance of the offences on a complaint filed by the respondent against the petitioner and the co-accused, whereafter the process has been issued against them.

2 Issue notice of this petition to the respondent. Mr. Vishal Sharma, learned DSGI, accepts notice on behalf of the respondent.

3 Heard and considered.

4 The question of law that has been raised in the present petition is as to whether, in a complaint pertaining to an offence committed prior to the

coming into force of the Bharatiya Nagarik Surakhsha Sanhita, 2023 (hereinafter referred to as “BNSS”), the procedure is to be governed by the provisions of the Code of Criminal Procedure, 1973 (hereinafter referred to as “CrPC”) or by the provisions contained in the BNSS.

5 Before answering the aforesaid question, let me give a brief background of the facts that has led to filing of the instant petition. A complaint came to be filed by the respondent against the petitioner and the co-accused before the learned Special Judge. As per the complaint, the petitioner, who happens to be accused No.2 in the complaint, is alleged to have committed offences under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as “PMLA”) which arise out of predicate offences registered under FIR No. RC00420022A0008 dated 03.08.2022 for offences under Section 420 IPC read with Section 120-B IPC. The offences alleged to have been committed by the petitioner and the co-accused under the PMLA admittedly relate to a period prior to 01.07.2024, the date on which the BNSS came into force. The complaint out of which the impugned order has arisen was filed by the respondent before the learned Special Judge on 22.08.2024, i.e., after coming into force of the BNSS.

6 In the light of the aforesaid fact, it has to be determined as to which of the legislations viz. CrPC of 1973 or the BNSS of 2023 is to be applied by the learned Special Judge while proceeding further in the complaint. In this context, it would be apt to refer to the provisions contained in Section 531 of the BNSS, which relates to “Repeal and Savings”. It reads as under:

“531. Repeal and savings.

(1)The Code of Criminal Procedure, 1973 is hereby repealed.

(2)Notwithstanding such repeal-

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3)Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time”.

7 A bare reading of clause (a) of Subsection (2) quoted above reveals that if any appeal, application, trial, inquiry or investigation is pending on the date when the BNSS came into force, such appeal, application, trial, inquiry, or investigation has to be disposed of and continued in accordance

with the provisions of the Code of Criminal Procedure, 1973, and not in accordance with the provisions of the BNSS. The expression used is “pending”, meaning thereby that the appeal, application, trial, inquiry or investigation should be pending on the date of coming into force of the BNSS and once that is so, such appeal, application, trial, inquiry or investigation will have to be continued under the repealed Code of Criminal Procedure. Conversely, if the appeal, application, trial, inquiry or investigation commences after the coming into force of the BNSS, the Code of Criminal Procedure, 1973 would have no applicability, and such proceedings will have to be governed by the BNSS, 2023.

8 Learned DSGI, appearing for the respondent, has contended that in the instant case, the offences which are subject matter of the complaint have been committed prior to coming into force of the BNSS and the investigation of the said offences has been conducted before coming into force of the BNSS, as such, the provisions contained in Cr.P.C of 1973 would govern the procedure for dealing with the complaint filed by the respondent. On the other hand, the learned counsel for the petitioner has contended that because the complaint has been filed after the coming into force of BNSS, as such, the procedure prescribed under BNSS is to be applied.

9 In order to determine the merits of the rival contentions, it would be necessary to analyze and interpret the provisions contained in Section 531 of BNSS. The aforesaid provision has been a subject matter of interpretation in several cases decided by different High Courts across the Country. It would be apt to notice some of these decisions for finding an answer to the question as to

which procedural law is to be applied by the learned Special Judge in the case of the complaint that has been filed against the petitioner.

10 A Single Judge of the Punjab and Haryana High Court, in the case of **XXXX. State of UT Chandigarh and another**, (CRM-M No. 31808/2024, decided on 11-7-2024) has, after comparing the provisions contained in Section 484 of Cr.P.C 1973 with the provisions contained in Section 531 of BNSS, which are in *pari materia* with each other, culled out the following principles:

(i) The Code of Criminal Procedure, 1973 stands repealed w.e.f. 01.07.2024. Ergo; no new/fresh appeal or can be filed under Code of Criminal Procedure, 1973 on or after 01.07.2024;.

(ii) The provisions of Section 4 and Section 531 of BNSS, 2023 are mandatory in nature as a result whereof any appeal/application/revision/petition/trial/inquiry or investigation before 01.07.2024 are required to be disposed of, continued, held or made (as the case may be) in accordance with the provisions of Code of Criminal Procedure, 1973. In other words, any appeal/application/revision/petition filed on or after 01.07.2024 is required to be filed/instituted under the provisions of BNSS, 2023;

(iii) Any appeal/application/revision/petition filed on or after 01.07.2024 under the provisions of [Cr.P.C.](#), 1973 is non-maintainable & hence would deserve dismissal/rejection on this score alone. However, any appeal/application/revision/petition filed upto 30.06.2024 under the provisions of [Cr.P.C.](#), 1973 is maintainable in law. To clarify; in case any appeal/application/revision/petition is filed upto 30.06.2024 but there is defect (Registry objections, as referred to in common parlance) and such defect is cured/removed on or after 01.07.2024, such appeal/application/revision/petition shall be deemed to have been validly filed/instituted on or after 01.07.2024 and, therefore, would be non- maintainable; and,

(iv). Section 531 of BNSS shall apply to "revision", "petition" as also "petition of complaint" (ordinarily referred to as complaint before Magistrate) with the same vigour as it is statutorily mandated to apply to "appeal/application/trial/inquiry or investigation" in terms of Section 531 of BNSS."

11 Again the High Court of Bombay has, in the case of **Chowgule and Co. (P) Ltd. v. Public Prosecutor, 2024 SCC OnLine Bom 2501**, while dealing with a similar issue, after noticing the provisions contained in Section 531 of BNSS, observed as under:

“47. A plain and simple reading of this provision and more particularly the saving clause i.e. Sub [Section 2\(a\)](#) as quoted above would clearly go to show that the pending investigation immediately before the date on which the said 'Sanhita' comes into force shall be disposed of/continued, held or made as the case may be in accordance with the code of Criminal Procedure 1973 as in force immediately before such commencement as if this Sanhita has not come into force.

48. Thus the saving clause in Section 531 of BNSS 2023 clearly and unambiguously save the investigation pending prior to commencement of the BNSS 2023. The wordings in sub [Section 2\(a\)](#) of Section 531 of the BNSS 2023 would make it clear, that even such pending investigation shall be disposed of, continued, held or made as the case may be in accordance with the [Code of Criminal Procedure 1973](#)”.

12 The Delhi High Court, in the case of **Prince vs State NCT of Delhi, (2023) DLT 714**, has taken the view that a bail application filed in a case where the FIR was registered prior to 01.07.2024, but the application was filed after that date, would be governed by the BNSS, 2023. Similarly, the Kerala High Court has, in the case of **Abdul Khader vs State of Kerala, 2024 SCC OnLine Ker 2588**, held as under:

(i) An appeal filed on or after 01.07.2024 shall be governed by the procedure provided under the BNSS and not by the provisions of the Code of 1973;

(ii) Whether the judgment of conviction was before or after 01.07.2024, if the appeal is filed on or after 01.07.2024, the same can be filed following the procedure contained in the provisions of the BNSS;

(iii) All applications filed and steps taken in the appeals filed prior to 01.07.2024 shall be under the provisions of the Code of 1973; and,

(iv) When an appeal/application is represented after curing filing defects its date of filing shall relate back to the date of its first presentation.

13 The High Court of Meghalaya has, in the case of **S.M. Suna vs N.D. Chullai** (Bail Application No. 15/2024 and connected cases, decided on 27.08.2024), after considering the aforesaid judgments of Punjab and Haryana High Court and the Delhi High Court, held that post 01.07.2024, any application, be it bail or otherwise, would have to be preferred under the related provisions of the BNSS, 2023 where no such applications are pending as on 01.07.2024.

14 However, a contrary view has been taken by the Rajasthan High Court in the case of **Krishna Joshi v. State of Rajasthan, 2024 SCC OnLine Raj 2042** by holding that if an FIR is registered prior to 01.07.2023 under the Cr.P.C., it would amount to a “pending inquiry/investigation” within the meaning of Section 531(2)(a) of BNSS and, thus, the entire subsequent investigation procedure and even the trial procedure qua such an FIR shall be then governed by the Cr.P.C. and not by the BNSS.

15 Thus, while High Courts of Bombay, Punjab and Haryana, Kerala, and Meghalaya have taken the view that if an application, appeal, inquiry, trial or investigation is pending on 01.07.2024, the same shall be conducted and concluded in accordance with the provisions contained in Cr.P.C, 1973, meaning thereby that if an investigation is pending on the crucial date, then it has to be concluded under the provisions of the CrPC. Similarly, if an appeal is pending on that date, it has to be concluded under the CrPC. Likewise, if any

other application or proceeding, including trial or inquiry is pending on the said date, it has to be governed by the provisions of the Cr.P.C. However, if an appeal, application, or any other proceeding, including a complaint, is filed on or after 01.07.2024, even if the offence may have been committed prior to the said date, the provisions contained in the BNSS would govern the field. The Rajasthan High Court has, however, taken a contrary view, holding that the date of commission of the offence would be the determining factor in deciding whether CrPC or BNSS applies.

16 A meticulous analysis of the provisions contained in Section 531 of BNSS leaves no manner of doubt in holding that the relevant factor for determining the applicability of BNSS or CrPC, 1973, is the stage of the case prevailing immediately prior to 01.07.2024. If the stage of the case at the relevant date is investigation, then the investigation has to be conducted and concluded under CrPC, 1973. If the case is at the stage of inquiry or trial, it has to be concluded under the Cr.P.C. Similarly, if the stage is that of an appeal, application for bail, or complaint, the same has to be governed by the provisions of CrPC, 1973. However, once the investigation is completed and the challan or complaint is laid before the Court after 01.07.2024, then the procedure provided under BNSS would govern the subsequent proceedings. Likewise, if a bail application is filed after 01.07.12024 in a case where the offence had been committed prior to the said date, such an application has to be dealt with in accordance with the procedure prescribed under BNSS and not under the CrPC. Thus, the date of commission of the offence or the registration of the FIR is not material for determining the applicability of BNSS. Even if the offence has been committed or the FIR has been registered before

01.07.2024, the stage of the proceedings as it existed immediately prior to that date will have to be completed under the Cr.PC, 1973. However, once the case progresses to the next stage after coming into the force of BNSS, then the subsequent stage has to be governed by the provisions contained in BNSS and not by the provisions contained in CrPC, 1973. I would, therefore, respectfully disagree with the view taken by the Rajasthan High Court and concur with the view expressed by the High Courts of Punjab & Haryana, Delhi, Kerala and Meghalaya.

17 Coming to the facts of the present case, as already stated, although the offences alleged against the petitioner have been committed prior to 01.07.2024, but the complaint against him has been filed on 22.08.2024, i.e after the BNSS had come into force. Therefore, the procedure prescribed under the BNSS for taking cognizance of offences and for proceeding further in the matter would hold the field. Therefore, the learned Special, Judge while passing order dated 30.09.2024, has fallen into grave error in holding that because ECIR was recorded prior to 01.07.2024, therefore, the provisions of CrPC would apply to the present case. Having held that the procedure prescribed under the BNSS would govern the complaint filed against the petitioner and the co-accused, it has to be seen as to whether the impugned order whereby process has been issued against the petitioner is in conformity with the procedure prescribed under the BNSS.

18 Section 223 of BNSS governs the manner in which the cognizance of offences is to be taken by a Magistrate. Proviso to Subsection (1) of Section 223 of BNSS lays down that cognizance of an offence cannot be taken by a Magistrate without first giving the accused an opportunity of being heard. The

corresponding provision of CrPC, 1973 viz. Section 200, does not provide for granting such an opportunity of hearing to the proposed accused at the stage of taking cognizance. The learned Special Judge, having erroneously applied the provisions of Section 200 of CrPC, 1973, to the present case, has straightway taken cognizance of the offences and issued process against the petitioner and co-accused without affording them an opportunity of hearing. Since the procedure adopted by the Special Judge is not in accordance with the mandate of Section 223 of the BNSS, as such the impugned order dated 30.09.2024 is unsustainable in law.

19 For the foregoing reasons, the petition is allowed, and the order impugned is set aside. The matter is remanded to the learned Special Judge with a direction to proceed afresh in accordance with the procedure prescribed under Chapter XVII of the BNSS while dealing with the complaint filed by the respondent against the petitioner and the co-accused.

20 The Registrar General shall circulate copies of this judgment to all the criminal Courts within the jurisdiction of the High Court of Jammu & Kashmir and Ladakh for their guidance.

Jammu
16 .04.2025.

(SANJAY DHAR)
JUDGE

Whether the order is speaking: **Yes**
Whether the order is reportable: **Yes**

To

**The Registrar Judicial,
High Court of J&K and Ladakh
Srinagar.**

**From Anil Raina
Addl Registrar/Secretary to
Hon'ble Mr. Justice Sanjeev Kumar
High Court of J&K and Ladakh,
Jammu**