



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-10158-2026 (O&M)

Reserved On: 09.04.2026

Date of decision: 07.07.2026

VIVO INDIA PRIVATE LIMITED

...Petitioner

V/S

**SERIOUS FRAUD INVESTIGATION OFFICE, MINISTRY OF
CORPORATE AFFAIRS, UNION OF INDIA**

...Respondent

CORAM: HON'BLE MR. JUSTICE SUBHAS MEHLA

PRESENT: Mr. R.S. Rai, Senior Advocate with
Mr. V.P. Singh, Advocate,
Mr. Priyank Ladoia, Advocate,
Ms. Rubina Virmani, Advocate,
Mr. Kshitiz Rao, Advocate,
Mr. Arjun Narang, Advocate,
Ms. Puneet Dhanoa, Advocate and
Ms. Ananya Singh, Advocate for the petitioner.

Mr. Arvind Moudgil, Senior Advocate with
Mr. Tajeshvar Singh Sullar, CGC (UOI)
Mr. Anshuman Singh, Advocate,
Ms. Shubhleen Dhariwal, Advocate
Ms. Yan Dasi, Advocate,
Ms. Ahana Bali, Advocate and
Ms. Priya, Advocate for respondent-SFIO.

Mr. Pradeep Yadav, Senior Prosecutor, with
Ms. Puneeta Sethi, Advocate (through V.C.) and
Mr. Gautam Bhardwaj, Advocate for respondent-Union of
India.

SUBHAS MEHLA, J.

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'the BNSS'), seeking setting aside of order dated 11.02.2026, passed by learned Additional Sessions Judge, Gurugram, Haryana in complaint case bearing COMA No.24 of 2025 dated



26.08.2025 titled '*Serious Fraud Investigation Office v. VIVO Mobile Communication Company Ltd. and 70 others*', as well as all consequent proceedings arising subsequent to passing of impugned order dated 11.02.2026 **(Annexure P-1)**.

2. It is pleaded in the petition that the petitioner, through publicly available information on the Court websites, came to know that a complaint purportedly under Sections 447, 7(5), 7(6) and 449 of the Companies Act, 2013 (for short 'Act, 2013') had been filed before Special Court, District Gurugram wherein the petitioner has been proposed as accused no.3. That on 11.02.2026, the case was listed before learned Special Court and when the arguments on point of cognizance were being addressed by the Special Public Prosecutor and Panel counsel of the complainant, the petitioner then appeared through its duly appointed counsel and filed an application **(Annexure P-10)** under the first proviso to Section 223 of the BNSS asserting that the complaint is a criminal complaint case governed by Chapter XVI of the BNSS thereby praying that the Court ought to grant a pre-cognizance hearing to the petitioner as mandated by Section 223 of the BNSS. The said application was opposed by the respondent/complainant and filed a reply to the said application **(Annexure P-11)**. The application of the petitioner seeking pre-cognizance hearing was dismissed by the Special Court vide impugned order dated 11.02.2026 **(Annexure P-1)**. The present petition has been filed assailing the said impugned order and consequently seeking a pre-cognizance hearing as per first proviso to Section 223 of the BNSS.

3. The principal issue arising for consideration in the present petition concerns the applicability of the newly inserted proviso of Section 223 of the



BNSS to the offences under the Act, 2013, wherein the complaint is filed by the Serious Fraud Investigation Office (hereinafter 'SFIO'). Unlike the *erstwhile* Section 220 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the newly inserted proviso to Section 223 of the BNSS contemplates a mandatory pre-cognizance hearing to the accused. The question that arises is whether such requirement is equally applicable to prosecutions initiated under the Act, 2013, particularly in cases where the complaint has been instituted by the SFIO.

SUBMISSIONS ON BEHALF OF THE PETITIONER

4. Learned senior counsel appearing on behalf of the petitioner assailed the impugned order dated 11.02.2026 passed by learned Additional Sessions Judge, Gurugram, whereby the petitioner's application seeking a pre-cognizance hearing was dismissed. It was contended that the impugned order is contrary to the mandate of the newly inserted first proviso to Section 223 of the BNSS, which introduces a substantive and beneficial safeguard in favour of a proposed accused by requiring the Court to afford a pre-cognizance hearing in complaint cases. According to the petitioner, the said requirement is mandatory in nature.

5. Learned senior counsel submitted that by virtue of Section 438 of the Act, 2013, the provisions of the Cr.P.C., now replaced by the BNSS, are expressly made applicable to proceedings before the Special Court under the Act, 2013. Learned senior counsel contended that since the complaint in the present case was instituted on 26.08.2025, i.e., after the enforcement of the BNSS, the procedure prescribed under the BNSS would necessarily govern the proceedings in question.



6. It was further contended that the order dated 26.08.2025 passed by learned Additional Sessions Judge unequivocally records the filing by the respondent-SFIO as a “complaint”. Learned senior counsel argued that such characterisation is neither incidental nor a matter of mere nomenclature or administrative convenience; rather, it constitutes a conscious judicial determination regarding the nature of the proceedings. Learned senior counsel contended that the matter was registered under the “COMA” category, thereby clearly attracting the procedure applicable to complaint cases under Chapter XVI of the BNSS, including the first proviso to Section 223 thereof.

7. Learned senior counsel further argued that learned Additional Sessions Judge, while passing the impugned order, adopted a contradictory approach by subsequently treating the very same filing as a “police report” for the purpose of denying the petitioner a pre-cognizance hearing. Such inconsistency, according to the petitioner, denied the petitioner the benefit of the statutory safeguard contained in the first proviso to Section 223 of the BNSS. According to learned senior counsel, such inconsistent treatment of the proceedings renders the impugned order legally unsustainable.

8. It was additionally submitted that the proceeding instituted by the SFIO is, in substance as well as in form, a complaint and not a police report. In support of this contention, learned senior counsel contended that even the SFIO filed the case as a complaint, and not as a police report. It was further contended, that SFIO’s reply to the petitioner’s application filed before learned Sessions Court, SFIO’s counter-affidavit filed before this Court, and the statutory provisions under which, the filing was made before learned Sessions Court, namely, Section 439(2) read with Section 212(6) of the Act, 2013, confirm that



the filing is, and can only be construed as a “complaint”, thereby mandating compliance with the procedure prescribed under Section 223 of the BNSS, including the grant of a pre-cognizance hearing to the petitioner.

9. Learned senior counsel for the petitioner further contended that the statutory scheme of the Act, 2013 itself unequivocally demonstrates that proceedings initiated by the SFIO are in the nature of complaint cases and not proceedings arising out of a police report. In this regard, reliance was placed upon multiple provisions of the Act, 2013 :

i. Firstly, attention was drawn to **Section 439(2)** of the Companies Act, 2013, which places a statutory embargo upon the Special Court from taking cognizance of any offence under the Act, 2013 except upon a “complaint in writing” made by the Central Government, Registrar, or any officer authorised in that behalf. Secondly, reliance was placed upon the second proviso to **Section 212(6)** of the Act, 2013 which specifically stipulates that the Special Court may take cognizance of offences investigated by the SFIO only upon a “complaint in writing” made by the Director, SFIO, or any officer of the Central Government authorised by it.

ii. Learned senior counsel further submitted that **Section 438** of the Act, 2013 qua proceedings before the Special Court expressly incorporates the procedural framework of the Cr.P.C., which, now should be construed as the BNSS, thereby making the procedural safeguards contained therein fully applicable to prosecutions under the Act, 2013 unless specifically excluded by the legislature.



iii. Reliance was also placed upon **Section 436(1)(d)** of the Act, 2013, which contemplates two distinct modes whereby the Special Court may take cognizance of offences under the Act, 2013, namely, upon a police report, or upon a complaint. Learned senior counsel submitted that the legislature, by consciously maintaining this distinction, recognized that complaint proceedings and police-report proceedings are separate and mutually exclusive categories.

10. Learned senior counsel argued that on a cumulative reading of Sections 212(6), 436(1)(d), 438 and 439(2) of the Act, 2013 the legislative intent is unambiguous: proceedings initiated by the SFIO are necessarily complaint proceedings. Consequently, once the filing is held to be a complaint, the procedure governing complaint cases under Chapter XVI of the BNSS, including the mandatory requirement of a pre-cognizance hearing under the first proviso to Section 223 of the BNSS, becomes fully applicable to the present case.

11. Learned senior counsel for the petitioner further placed reliance upon the decisions of the Hon'ble Supreme Court in *Yash Tuteja & Anr. v. Union of India & Ors.*, (2024) 8 SCC 465; *Tarsem Lal v. Directorate of Enforcement, Jalandhar*, (2024) 7 SCC 61; and *Kushal Kumar Aggarwal v. Directorate of Enforcement*, 2025 INSC 760. Referring to the aforesaid judgments, learned senior counsel submitted that while interpreting Section 46 of the Prevention of Money Laundering Act, 2002 (for short "PMLA"), the Hon'ble Supreme Court has categorically held that proceedings arising out of complaints instituted by the Directorate of Enforcement are governed by the procedural framework of the Cr.P.C. (now the BNSS), except to the extent specifically excluded by the special statute.



Learned senior counsel submitted that Section 46 of the PMLA is *pari materia* with Section 438 of the Act, 2013, as both provisions expressly stipulating that the procedure prescribed under the Cr.P.C./BNSS would apply to proceedings before the Special Court. Learned senior counsel contended that the same legal principle that has been applied by the Hon'ble Supreme Court in relation to complaints filed by the Directorate of Enforcement under the PMLA would equally govern complaints instituted by the SFIO under the Act, 2013, and in the absence of any express exclusion under the Act, 2013, the provisions under the BNSS, including the first proviso to Section 223, would squarely apply to proceedings initiated on a SFIO complaint before the Special Court .

12. Learned senior counsel for the petitioner further assailed the reasoning adopted in the impugned order by contending that learned Additional Sessions Judge while placing reliance upon the decision of the Hon'ble Supreme Court in ***Sanjabij Tari v. Kishore S. Borcar & Anr., 2025 INSC 1158*** has erroneously concluded that a pre-cognizance hearing under the first proviso to Section 223 of the BNSS is not required in proceedings arising under special enactments. It was contended that the judgment of the Hon'ble Supreme Court, in ***Sanjabij Tari (supra)***, was in the peculiar context of the summary trial mechanism under the Negotiable Instruments Act, 1881 (for short 'NI Act'), wherein Section 143 expressly mandates trial of complaints under Section 138 of the NI Act in a summary manner with the object of ensuring expeditious disposal of cheque dishonour cases, and in this context, the Hon'ble Supreme Court observed that insistence upon a pre-cognizance hearing under Section 223 of the BNSS would frustrate the legislative intent of speedy adjudication of summons cases arising from cheque-bouncing complaints. Hence, learned senior counsel



for the petitioner argued that the ratio of the said judgment i.e. *Sanjabij Tari (supra)*, which is specifically in context of summary proceedings under the NI Act, cannot be mechanically extended to the present case, as Section 436(3) of the Act, 2013 permits summary trial only in respect of offences punishable with imprisonment for a term not exceeding three years. However, in the present complaint, the petitioner has been accused, *inter alia*, of offences under Section 447 of the Act, 2013, which prescribes punishment extending up to ten years' imprisonment. Consequently, the offences alleged are triable as warrant cases and fall outside the ambit of the summary trial mechanism contemplated under Section 436(3) of the Act, 2013. Learned senior counsel therefore submitted that learned Additional Sessions Judge committed a manifest error in relying upon the aforesaid decision, despite the fact that the said judgment has no application to prosecutions under Section 447 of the Act, 2013.

13. Learned senior counsel for the petitioner further assailed the impugned order dated 11.02.2026 by contending that learned Additional Sessions Judge has erroneously placed reliance upon Section 212(15) of the Act, 2013 to conclude that the investigation report submitted by the SFIO is to be treated as a "deemed police report", and therefore, the safeguard under Section 223 of the BNSS would stand excluded as it only applies to complaint cases. It was submitted that such interpretation adopted by learned Additional Sessions Judge is patently erroneous, as it overlooks the limited scope and purpose of the statutory deeming fiction contained in Section 212(15) of the Act, 2013 as it clearly provides that the investigation report filed before the Special Court shall be deemed to be a police report only "for the purposes of framing of charges", which is a stage arising subsequent to taking cognizance. Learned senior counsel



argued that the deeming fiction created by Section 212(15) of the Act, 2013 is therefore confined to a specific procedural stage, and cannot be extended beyond its express statutory purpose so as to convert the complaint proceedings into a police-report case for all purposes under the BNSS. Hence, at the stage of taking cognizance, the proceedings would continue to retain the character of a complaint case, thereby attracting the procedural safeguards contemplated under the proviso to Section 223 of the BNSS.

14. Learned senior counsel for the petitioner further contended that learned Additional Sessions Judge has proceeded on an erroneous premise in holding that the Special Court under the Act, 2013 is to be treated as a Court of Sessions for all procedural purposes, and that consequently, Section 213 of the BNSS governing cognizance by Court of Sessions would apply to the exclusion of Section 223 of the BNSS. Learned senior counsel drew attention of the Court to Section 436(1)(d) of the Act, 2013, which expressly provides that the Special Court is empowered to take cognizance of offences without the accused being committed to it for trial. It was thus argued that the Special Court does not function as a Court of Sessions receiving a case upon committal by a Magistrate; rather, it directly receives complaints instituted by the SFIO under the Act, 2013, and is empowered to take cognizance as the Court of first instance. On this basis, it was contended that while the Special Court may be designated as a Court of Sessions for the purposes of trial, however in so far as cognizance of an original complaint is concerned, it functions as a Court of first instance dealing with complaint cases, thereby attracting the procedure prescribed under Chapter XVI of the BNSS, including Section 223 thereof. It was further submitted that a similar procedural architecture exists under the PMLA where Special Courts, though



designated as Courts of Sessions, entertain complaints filed directly by the Directorate of Enforcement without committal proceedings, and such complaints are nonetheless governed by the general procedural framework applicable to complaint cases under the Cr.P.C./BNSS. Accordingly, learned senior counsel argued that learned Additional Sessions Judge has wrongly held that Section 213 of the BNSS applies to the present case, and not Section 223 of the BNSS, thereby resulting in the impugned order dated 11.02.2026. Hence, learned senior counsel prayed that the present petition ought to be allowed and the impugned order be set aside.

SUBMISSIONS ON BEHALF OF RESPONDENT/ S.F.I.O.

15. *Per contra*, learned senior counsel appearing on behalf of the SFIO opposed the present petition and contended that the same is devoid of merits. It was submitted that the impugned order dated 11.02.2026 passed by learned Additional Sessions Judge is legally sound, based upon a correct interpretation of the statutory provisions governing the proceedings, and therefore, warrants no interference in exercise of jurisdiction under Section 528 of the BNSS.

16. Learned senior counsel for the SFIO contended that the provisions of the BNSS are not applicable to special statutes like the Act, 2013, which is a self-contained Code providing a complete mechanism for investigation, cognizance, and trial of offences under it. It was submitted that the Act, 2013 lays down a detailed and specific procedure governing such proceedings, which must prevail over the general procedural law. Accordingly, reliance was placed on Sections 4(2) and 5 of the BNSS to contend that where a special law provides for a particular procedure, the general provisions of the BNSS would stand excluded



to that extent. On this basis, it was argued that the applicability of Section 223 of the BNSS to proceedings before a Special Court under the Act, 2013 is excluded and therefore the question of granting a pre-cognizance hearing does not arise.

17. Learned senior counsel for the SFIO further contended that by virtue of Section 212(15) of the Act, 2013, the prosecution complaint filed by the SFIO is deemed to be a police report under Section 173 of the Cr.P.C. (now Section 193 of the BNSS), and therefore the proviso to Section 223 of the BNSS has no application. It was submitted that the SFIO conducts investigation into offences under Section 212 of the Act, 2013. Further, Section 212(15) of the Act, 2013 provides that the investigation report submitted before the Special Court shall be treated as a report under Section 173 of the Cr.P.C. (Section 193 of the BNSS). Learned senior counsel submitted that Section 212(15) of the Act, 2013 creates a legal fiction, the object whereof is to place the SFIO report on the same footing as a police report (i.e. charge-sheet) so that the subsequent procedural steps under the Cr.P.C./BNSS relating to framing of charges are properly applied. It was argued that once the legislature has equated the SFIO report with a police report for the purposes of criminal procedure, the entire proceeding must be treated as one based on a police report and not as a complaint case, and consequently, the proposed accused have no right to a pre-cognizance hearing. In support of the said submissions, reliance was placed upon ***Deloitte Haskins & Sells LLP v. Union Of India, 2025 SCC Online NCLAT 463.***

18. Learned senior counsel for the SFIO further contended that the proviso to Section 223 of the BNSS applies only to private complaints and not to complaints filed by public authorities or statutory investigating agencies. It was submitted that a Magistrate takes cognizance of an offence either on a police



report or on a private complaint. In the case of a private complaint, the Magistrate has only the allegations contained in the complaint before him, and since no prior investigation material is available, he examines the complainant on oath and may also record statements of witnesses before deciding whether cognizance is to be taken. On the other hand, where cognizance is taken on a police report, the Magistrate has before him the entire investigation record, including statements of witnesses and other material collected during investigation, and he takes cognizance after being satisfied that there is sufficient ground to proceed against the accused.

On the basis of aforesaid contention, learned senior counsel submitted that the safeguard contained in the proviso to Section 223 of the BNSS is intended only for cases arising out of private complaints where no prior investigation has been conducted. Learned senior counsel further submitted that proceedings initiated by the SFIO stand on an entirely different footing as they are instituted only after a detailed investigation conducted under Section 212 of the Act, 2013 which are statutorily deemed to be police reports by virtue of Section 212(15) of the Act, 2013. Consequently, according to the respondents, a clear distinction exists between a private complaint filed by an individual and a prosecution complaint instituted by the SFIO at the instance of the Central Government. On the aforesaid premise, learned senior counsel prayed that prosecution complaints filed by the SFIO pursuant to investigation undertaken under the Act, 2013 ought to be treated differently from ordinary private complaints, and therefore the proviso to Section 223 of the BNSS would have no application at the stage of taking cognizance in such proceedings.



19. Learned senior counsel appearing on behalf of the SFIO further contended that the Special Court constituted under the Act, 2013, functions as a Court of Session in cases involving offences punishable with imprisonment of two years or more, and consequently the procedure prescribed under Section 213 of the BNSS for cognizance by a Court of Sessions would govern the present proceedings. In support of the aforesaid contention, reliance was placed upon Section 435(1)(a) of the Act, 2013, which provides that in relation to offences punishable with imprisonment of two years or more, the Special Court shall consist of a single Judge holding office as a Sessions Judge or Additional Sessions Judge. Learned senior counsel further submitted that the principal allegation in the present case pertains to commission of fraud under Section 447 of the Act, 2013, which prescribes a minimum punishment of three years' imprisonment, thereby squarely attracting the aforesaid provision. Further, reference was made to Section 436(1)(d) of the Act, 2013, which provides that the Special Court may take cognizance of an offence either upon a police report or upon a complaint, without the accused being committed to it for trial. Reliance was also placed upon Section 438 of the Act, 2013, which stipulates that the Special Court shall be deemed to be a Court of Sessions, Metropolitan Magistrate, or Judicial Magistrate First Class, as the case may be. It was submitted that in the facts of the present case, having regard to the nature and punishment prescribed for the alleged offences, the Special Court necessarily operates as a Court of Sessions within the meaning of Sections 435 and 438 of the Act, 2013. Consequently, according to the respondents, the procedure governing cognizance by a Court of Sessions under Section 213 of the BNSS would apply, and not the procedure prescribed



for Magistrates taking cognizance of complaint cases under Section 223 of the BNSS.

20. Learned senior counsel for the SFIO further submitted that the decision of the Hon'ble Supreme Court in ***Sanjabij Tari (supra)***, though rendered in the context of proceedings under Section 138 of the NI Act, is nevertheless applicable to proceedings under all special statutes, including the Act, 2013. It was contended that the rationale underlying the said judgment is not confined merely to proceedings under the NI Act, but extends to all special enactments which provide a distinct statutory mechanism for investigation, cognizance, and trial. Learned senior counsel further contended that the procedure prescribed under the NI Act is materially similar to the procedure under the Act, 2013, inasmuch as both enactments constitute special statutes providing their own distinct mechanisms for institution, cognizance, and trial of offences. On this basis, learned senior counsel submitted that general provisions contained in the BNSS, including the proviso to Section 223 thereof, cannot be mechanically imported into proceedings governed by such enactment. On the aforesaid basis, learned senior counsel argued that the principle enunciated in ***Sanjabij Tari (supra)*** squarely applies to prosecutions instituted by the SFIO under the Act, 2013 as well, and consequently, no pre-cognizance hearing under the proviso to Section 223 of the BNSS is contemplated in such proceedings.

21. Learned senior counsel appearing on behalf of the SFIO further contended that the reliance placed by the petitioner upon ***Kushal Kumar Aggarwal (supra)*** is misconceived and the said judgment has no application to proceedings under the Act, 2013. It was submitted that the decision in ***Kushal Kumar Aggarwal (supra)*** was rendered in the specific context of proceedings



under the PMLA, and cannot be mechanically extended to prosecutions instituted under a distinct special enactment such as the Act, 2013. Learned senior counsel argued that the applicability of the provisions corresponding to Sections 200 to 204 of the Cr.P.C. to proceedings under the PMLA had already been recognised by the Hon'ble Supreme Court in *Yash Tuteja & Anr. (supra)* and *Tarsem Lal (supra)*, and consequently, the judgment in *Kushal Kumar Aggarwal (supra)* merely proceeds on the legal position already settled in the context of the PMLA, and the same cannot be treated as laying down any general principle applicable across all special statutes. It was thus contended that no inference can be drawn therefrom to hold that the provisions of Section 223 of the BNSS would automatically apply to proceedings instituted by the SFIO under the Act, 2013.

22. On the strength of the aforesaid submissions, learned senior counsel appearing on behalf of the SFIO prayed that the present petition be dismissed being devoid of merits.

REBUTTALS BY PETITIONER

23. Opposing the submissions advanced on behalf of the SFIO regarding non-applicability of the BNSS to special enactments in view of Sections 4(2) and 5 of the BNSS, learned senior counsel for the petitioner contended that the said argument proceeds on a fundamental mis-statement of law. Learned senior counsel submitted that the principle of '*generalalia specialibus non derogant*' applies only in cases where an irreconcilable inconsistency exists between the provisions of a special statute and those of a general enactment. According to the petitioner, no such conflict arises in the present case, inasmuch as Section 438 of the Act, 2013 itself expressly provides that the provisions of the Cr.P.C., now



replaced by the BNSS, shall apply to proceedings before the Special Court. It was argued that the Act, 2013 does not exclude the application of the general criminal procedure law, rather, it specifically incorporates it. In support of this submission, reliance was placed on the decision of the Hon'ble Bombay High Court in *N. Sampath Ganesh v. Union of India, 2020 SCC Online Bom 782*, wherein it has been held that Section 438 of the Companies Act, 2013 makes the provisions of the Cr.P.C. (now the BNSS) applicable to proceedings before the Special Court under the Act, 2013. It was further contended that any interpretation to the contrary would render Section 438 of the Act, 2013 otiose, which is impermissible under settled principles of statutory interpretation. Learned senior counsel also submitted that Sections 4 and 5 of the BNSS are in the nature of saving provisions, which preserve the operation of procedures prescribed under special enactments, and therefore cannot be invoked to exclude the applicability of the BNSS where the special statute itself adopts the procedural framework of the Cr.P.C. Accordingly, it was contended that the reliance placed by the SFIO on Sections 4 and 5 of the BNSS is misconceived.

24. Further, opposing the submission advanced on behalf of the SFIO that the proviso to Section 223 of the BNSS applies only to private complaints, learned senior counsel for the petitioner submitted that the language of Section 223 of the BNSS does not draw any distinction between complaints filed by private individuals and those instituted by public authorities or statutory agencies. Learned senior counsel on behalf of the petitioner contended that the legislature in its wisdom, has consciously extended the safeguard of a pre-cognizance hearing to all proposed accused in complaint cases irrespective of the identity or status of the complainant, therefore, the benefit of the said provision cannot be



restricted or diluted by judicial interpretation so as to exclude complaints filed by statutory bodies. Accordingly, it was contended that such a limitation, as suggested by the SFIO, finds no support in the text of Section 223 of the BNSS and would amount to adding words to the statute, which is impermissible in law.

25. In response to the contention advanced on behalf of the SFIO that the judgment of the Hon'ble Supreme Court in ***Kushal Kumar Aggarwal (supra)*** is confined to proceedings under the PMLA and has no applicability to prosecutions under the Act, 2013, learned senior counsel for the petitioner submitted that the said argument is fundamentally misconceived. Learned senior counsel submitted that the respondents have erroneously contended that the applicability of Section 223 of the BNSS to proceedings under the PMLA was recognised only because the Hon'ble Supreme Court, in ***Yash Tuteja (supra)*** and ***Tarsem Lal (Supra)***, had earlier held Sections 200 to 204 of the Cr.P.C. to be applicable to proceedings under the PMLA, and that no similar procedural vacuum exists under the Act, 2013.

Learned senior counsel for the petitioner contended that the ratio laid down in ***Kushal Kumar Aggarwal (supra)*** is founded upon the interpretation of Section 46 of the PMLA, which makes the provisions of the Cr.P.C./BNSS applicable to proceedings before the Special Court. Learned senior counsel submitted that Section 46 of the PMLA is materially identical in its effect to Section 438 of the Act, 2013, inasmuch as both provisions mandate the applicability of the Cr.P.C./BNSS to proceedings before the Special Court constituted under the respective enactments. On this basis, it was argued that the legal principle laid down in ***Kushal Kumar Aggarwal (supra)*** is fully applicable to proceedings under the Act, 2013 as well. Learned senior counsel further argued



that Section 212(15) of the Act, 2013 merely governs the manner in which the SFIO investigation report is to be dealt with at the stage of framing of charge and cannot be construed as diluting, overriding, or excluding the mandatory procedural safeguards prescribed under the BNSS at the stage of taking cognizance.

26. On the basis of the aforesaid submissions and rebuttals, learned senior counsel for the petitioner prayed that the impugned order dated 11.02.2026 (**Annexure P-1**) be set aside, along with all consequential proceedings.

ANALYSIS AND OBSERVATIONS

27. This Court has considered the rival submissions advanced by learned counsel for the parties and has carefully examined the statutory scheme governing proceedings before the Special Court under the Act, 2013.

28. In the opinion of this Court it is appropriate to have a reference to the relevant provisions of the Companies Act, 2013 which are reproduced herein below :

Section 212. Investigation into affairs of Company by Serious Fraud Investigation Office.—

(1) Without prejudice to the provisions of section 210, where the **Central Government** is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

(a) on receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or



(d) on request from any Department of the Central Government or a State Government,

the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.

(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.

(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), offence covered under section 447



of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

(8) If any officer not below the rank of Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), **he may arrest** such person and shall, as soon as may be, inform him of the grounds for such arrest.



(9) The officer authorized under sub-section (8) shall, immediately after arrest of such person under such sub-section, forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Special Court or Magistrate's court.

(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.

(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.

(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

(14) On receipt of the investigation report, the Central Government may, after examination of the report and after taking such legal advice, as it may think fit, direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.



(14A) Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.

(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974).

(16) -(17) XXX. XXX

Section 217. Procedure, powers, etc., of inspectors.—(1) It shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation in accordance with the provisions contained in this Chapter, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person—

(a) to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and

(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.



(2) The inspector may require any body corporate, other than a body corporate referred to in sub-section (1), to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(3) The inspector shall not keep in his custody any books and papers produced under sub-section (1) or sub-section (2) for more than one hundred and eighty days and return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced:

Provided that the books and papers may be called for by the inspector if they are needed again for a further period of one hundred and eighty days by an order in writing.

(4) An inspector may examine on oath—

(a) any of the persons referred to in sub-section (1); and

(b) with the prior approval of the Central Government, any other person,

in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally:

Provided that in case of an investigation under section 212, the prior approval of Director, Serious Fraud Investigation Office shall be sufficient under clause (b).

(5) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the inspector, being an officer of the Central Government, making an investigation under this Chapter shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—



(a) the discovery and production of books of account and other documents, at such place and time as may be specified by such person;

(b) summoning and enforcing the attendance of persons and examining them on oath; and

(c) inspection of any books, registers and other documents of the company at any place.

(6) (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(ii) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

(7) The notes of any examination under sub-section (4) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(8) If any person fails without reasonable cause or refuses—

(a) to produce to an inspector or any person authorised by him in this behalf any book or paper which is his duty under sub-section (1) or sub-section (2) to produce;

(b) to furnish any information which is his duty under sub-section (2) to furnish;

(c) to appear before the inspector personally when required to do so under sub-section (4) or to answer any question which



is put to him by the inspector in pursuance of that sub-section;
or

(d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.

(9) The officers of the Central Government, State Government, police or statutory authority shall provide assistance to the inspector for the purpose of inspection, inquiry or investigation, which the inspector may, with the prior approval of the Central Government, require.

(10) - (12). XXX. XXXX

229. Penalty for furnishing false statement, mutilation, destruction of documents.—Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

(a) destroys, mutilates or falsifies, or conceals or tampers or unauthorised removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;

(b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or

(c) provides an explanation which is false or which he knows to be false,



he shall be punishable for fraud in the manner as provided in section 447.

435. Establishment of Special Courts.— (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, except under section 452, by notification establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of—

(a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and

(b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

436. Offences triable by Special Courts.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) all offences specified under sub-section (1) of section 435 shall be triable only by the Special Court established or designated for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;

(b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole



where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) in relation to an accused person who has been forwarded to him under that section; and

(d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years:

Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed:

Provided further that when at the commencement of, or in the course of, a summary trial, it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other



reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.

438. Application of Code to proceedings before Special Court.—
Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) 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 or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be, and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

439. Offences to be non-cognizable.—*(1)* Notwithstanding anything in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act **except the offences referred to in sub-section (6) of section 212** shall be deemed to be non-cognizable within the meaning of the said Code.

(2) **No court shall take cognizance** of any offence under this Act which is alleged to have been committed by any company or any officer thereof, **except on the complaint in writing of the Registrar, a shareholder or a member of the company, or of a person authorised by the Central Government** in that behalf:

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, **by a person authorised by the Securities and Exchange Board of India:**

Provided further that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.



(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), where the complainant under sub-section (2) is the Registrar or a person authorised by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

(emphasis supplied)

29. A perusal of the aforesaid provisions contained in the Companies Act, 2013 makes it amply clear that every stage in the proceedings up to the framing of the charge is specifically dealt with by the Act, 2013. Therefore, the Act, 2013 constitutes an exclusive Code on those aspects; except as otherwise provided in these provisions itself. These stages can be broadly divided into four aspects.

- (a) Investigation
- (b) Filing of the complaint
- (c) Taking of the cognizance
- (d) Framing of the charge

All these above aspects have their own salient features, which distinguish the investigation, the filing of the complaint, taking of the cognizance and framing of the charges from the one provided under the *erstwhile* Cr.P.C. or under the BNSS which govern the ordinary and general procedure of criminal case. The salient features of these aspects are, broadly, as under:

(a) Investigation

A perusal of the provisions contained in the Act, 2013 relating to the investigation of the offences clearly shows that the investigation conducted under the Act is different than an investigation conducted as per procedure provided



under the Cr.P.C./BNSS in its nature, scope, depth, powers of investigating officer, association of the company/individuals with the investigation and qua the evidentiary value attached to the investigation report, which broadly are as under:

- (i) The investigation cannot be started by any official of the SFIO on his own. The investigation can be done only on the order of the Central Government or on the order of the Director, by a designated official.
- (ii) The investigation has to relate to the specified company against whom the complaint has been received by the Central Government or the Director, or it can be related to the company affiliated to the main company under investigation. The investigation cannot be wide open to involve any sundry and unconcerned Company or Individual.
- (iii) When the investigating officer conducts the investigation, then he has to gather information from the records of the company concerned by associating the Directors, officials and employees or the former Directors, officials and the employees of the concerned company. The provision makes it bounden duty of the Directors, officials, and the employees of the company to provide all the relevant material to the investigating officer as required by him.
- (iv) Investigating officer is having the power to record statements of the witnesses or of the Directors, officials or the employees on oath. All statements by the persons examined by investigating officer are required to be signed by the person(s) so examined, and the same can be used against such persons.



(v) Investigating officer has the power of Civil Court for the purpose of enforcing attendance of the witnesses and for conducting discoveries and requisitioning relevant material.

(vi) Any person, the Director, the employee or the official of the company making false statement before the investigating officer or concealing the information despite requisition by the investigating officer is separately punishable under the Act, 2013. Even the cost of the investigation is to be ultimately borne by company concerned.

(vii) After completion of the investigation, the investigating officer has to submit the investigation report to the authority which had authorised him to conduct the investigation, that is, the Central Government or the Director, as the case may be.

(viii) Any further action on the investigation report has to be decided upon by the Central Government or by the Director of SFIO, as the case may be. The investigating officer cannot take any further step on the investigation report at his own level.

(ix) Any concerned person/company can take the copy of the investigation report.

(x) Investigation report has been given the statutory authenticity and evidentiary value by making it admissible in evidence per se.

(b) Filing of the complaint

For entertaining complaints, the Act, 2013 has created Special Courts. These Courts are to be presided by a Sessions Judge or Additional Sessions Judge in case of offences punishable under the Act, 2013 with imprisonment of two years or more, and by a Metropolitan Magistrate or a Judicial Magistrate of the



First Class, in the case of other offences. The features of complaint to be filed under the Act, 2013 are as under:

- (i) Under Section 439 (2) of the Act, 2013, the complaint can be filed by Registrar of Companies, a shareholder or a member of the company, or of a person authorised by the Central Government. So, a complaint can be initiated either by the government functionary or by the private individuals. Such a complaint can be either regarding cognizable offence or non-cognizable offence.
- (ii) However, as per the provision contained in Section 212 (6) of the Act, 2013, the complaint for offences punishable under Section 447 can only be filed either by the SFIO or by the person authorised by the Central Government.
- (iii) Such a complaint has to be filed in writing.
- (iv) Investigation officer cannot himself file the complaint on the basis of his investigation report by submitting the same directly before the Court. He would require separate authorisation from the Director of SFIO or from the Central Government for filing such complaint.
- (v) Since the complaint for offences punishable under Section 447, as investigated under Section 212 and as mandated by Section 212 (6); is filed only after completion of the investigation and after appreciation of the investigation report by the Director of SFIO or by the Central Government as the case may be, therefore, the said complaint would be based on and accompanied by the investigation report as such.



(vi) In the very next breath, Section 212(15) of the Act, 2013 has declared such an ‘investigation report’ filed with the complaint as a ‘police report’ for the purpose of framing of charge by creating a deeming legal fiction.

(c) Taking of the cognizance

The Act, 2013 has created special provisions regarding taking of cognizance of the offence by the Special Court, which can be summarised as under:

(i) The Special Court is prohibited from taking cognizance of an offence under the Act, 2013 except on a complaint filed in writing by the persons/authorities mentioned in Section 439(2); or in case offences punishable under Section 447 of the Act, 2013, unless the same is filed by the designated person authorised by the Director SFIO or by the Central Government as is provided in Section 212(6) of the Act.

(ii) Since the Special Courts have been categorised on the basis of their jurisdiction to entertain the complaints for the offence punishable for two years or more and the ones punishable for less than two years, therefore, there is no provision for commitment of cases by Magistrates to the Special Courts. The Special Courts have direct authority to entertain the complaints and to take cognizance of the offences within their respective jurisdictions, *ipso facto* and directly.

(iii) As per the provision contained in Section 436(1)(d), the Special Court is to take cognizance of the offence on perusal of the ‘investigation report’, which has been given the deeming fiction of being a ‘police report’, or on perusal of the complaint filed before it even when the accused is not produced before it. So, upto the stage of taking cognizance



of offences in the cases based on investigation report, there is no requirement of presence or hearing of the accused.

(iv) As per the provision contained in Section 439(3) of the Act, 2013 even the designated officer filing the complaint is not required to be present before the Special Court unless the Court directs him to be present.

It is the prosecutor appointed by the Central Government who is to take care of the proceedings after filing of the complaint. So as per the Act, 2013 the Special Court does not require the presence of the accused or the complainant, and the statutory scheme neither envisages the production of any evidence or any material other than the complaint and the investigation report, nor contemplates hearing of the accused or of the complainant upto the stage taking cognizance of offences.

(d) Framing of the charge

The Act, 2013 also makes clear the material on the basis of which the Special Court is to frame charges in a case arising out of an SFIO investigation. Section 212(15) specifically provides that the investigation report submitted by the SFIO shall be treated, by a legal fiction, as a police report filed under the Code and shall be taken into consideration by the Special Court for the purpose of framing charges. The same legislative intent is reflected in Section 436(1)(d) of the Act, 2013. These provisions indicate that proceedings before the Special Court are intended to be founded upon the investigation report and the material accompanying it.

30. The aforesaid provisions demonstrate that the Act, 2013 not only prescribes the substantive offences thereunder but also lays down a distinct procedural mechanism governing their investigation, prosecution and



adjudication. This Court, therefore, finds merit in the contention advanced on behalf of the respondent that the Act, 2013 constitutes a special statute containing a distinct and self-contained procedural framework for investigation, prosecution and trial of offences under the said enactment. As mentioned in foregoing paras, Sections 212, 435, 436, 438 and 439 of the Act, 2013 collectively indicate a separate legislative scheme governing proceedings before the Special Court.

31. The issues raised by the parties shall now be examined in the succeeding paragraphs.

i) Scope and Legislative Object of Deeming Fiction created by Section 212(15) of Companies Act, 2013

32. The contention advanced on behalf of the petitioner that the deeming fiction under Section 212(15) of the Act, 2013 is confined only to the stage of framing of charges cannot be accepted in the narrow and restrictive manner sought to be canvassed. Moreover, the position regarding taking cognizance is clarified by Section 436(1)(d) as mentioned above. This Section specifically provides that the Special Court may take cognizance on perusal of the police report or on perusal of the complaint, as the case may be. This excludes the requirement of any other exercise of collecting or appreciating the material or hearing the accused or the complainant before taking cognizance.

33. The legislative fiction so created, *even in its specific application for the purpose of framing of charges*, serves a crucial purpose. Section 212(15) of the Act, 2013 incorporates the ‘*deeming fiction*’ with the object of ensuring expeditious trial of offences under the Act. The ‘*deeming fiction*’ so envisaged under Section 212(15), places the investigation report accompanying the



complaint on a procedural footing equivalent to a final report under Section 173 of the Cr.P.C. (now Section 193 of the BNSS), thereby ensuring that the Special Court is immediately equipped with a complete evidentiary record for consideration along with the criminal complaint and to eliminate the procedural stage of pre-charge evidence that would otherwise prolong the commencement of trial. The procedure of investigation under the Act, 2013 is also so designed as to ensure giving a proper hearing to the concerned persons, companies or to the accused who are duly associated with the investigation and may make statement on oath and provide relevant material to the investigation officer. All these things already come before the Special Court as part of the investigation report. Therefore, giving an opportunity of hearing to the concerned person(s) before taking cognizance would only be a repetitive exercise. Accordingly, the accused would get due opportunity of hearing at the time of framing of charge, if he so desires. Therefore, the Legislature has consciously designed this scheme of the Act, 2013 to avoid unnecessary procedural delays and to advance the overarching objective of expeditious trial of offences under the Act, which often involve complex financial transactions and demand swift adjudication in the public interest.

34. As culled out in foregoing paragraphs, the legislative intent from the language incorporated in the provision is clear, that once the complaint and investigation report are presented before the Special Court, cognizance is to be taken on that basis without interposing an additional hearing at the pre-cognizance stage, which finds no support in the scheme under the Act, 2013. Despite specifically dealing in detail the issue of taking cognizance by the Special Court, the legislature has not found it appropriate to create any provision for pre-



cognizance hearing. It is well settled law of interpretation that if the Legislature is legislating on a legal aspect and still omits to legislate on some issue relating to that aspect then such omission has to be taken as intentional on the part of the legislature. Court is not supposed to create what legislature has intentionally omitted to create as the law.

35. Hence, the statutory provisions directly militate against any requirement of affording a pre-cognizance hearing to the accused. Introducing such a step would not only be inconsistent with the express framework of Sections 212, 436(1)(d) and 438 of the Act, 2013, but would also undermine the very rationale of treating the investigation report as a report under Section 173 of Cr.P.C. (now Section 193 of the BNSS) for framing charges and would also undermine the objective of speedy proceedings in the prosecutions initiated under the Act, 2013. Such a requirement not only delays the commencement of trial but also undermines the very rationale for creating Special Courts, namely, to ensure that offences involving fraud, misrepresentation, and other serious violations under the corporate law framework are tried expeditiously in the public interest, therefore, no additional hindrance such as a pre-cognizance hearing under Section 223 of the BNSS can be imported into the scheme of the Act, 2013.

36. Once the legislature has clearly provided that the SFIO investigation report shall be treated as a report under Section 173 of the Cr.P.C. (now Section 193 of the BNSS), the procedural consequences ordinarily flowing from a police report cannot be ignored while determining the nature of cognizance proceedings before the Special Court, particularly when Section 436(1)(d) of the Act, 2013 has reiterated that the investigation report to be taken as the material per se for taking cognizance by the Special Court.



37. Another argument raised by the learned senior counsel for the petitioner is that since the proceedings before the Special Court are initiated by way of 'written complaint', therefore, the same has to be treated as a 'complaint case'. However, as detailed in the foregoing paragraphs, a perusal of the provisions of the Act, 2013 makes it clear that though the proceedings are to be initiated by way of written complaint, yet in the cases where the complaint is based on and is filed along with the investigation report, the case is to be taken as the proceedings Instituted on a 'police report'. Hence, there is no merit in the contention of the learned senior counsel for the petitioner that the deeming fiction is only limited to the purpose of framing of charges. The words used in the statute, when their linguistic meaning is clear has to be assigned their literal meaning, however, it is equally settled law that to give effect to the object of the statute and where the literal meaning of the words create superfluous or absurd results, then to find out true meaning of the words used in the statute, the provisions contained in the statute has to be read as a whole. An overly constrained approach in the interpretation should not be allowed such that it derogates the legislative intent behind enacting the provision. A cumulative reading of the provisions of the Act, 2013 in no unambiguous terms makes it clear that the words 'complaint in writing' has been used only in conjunction to highlight the fact that such a complaint has to be filed under the authority of the Central Government or of the Director of SFIO, and not directly by any official of the SFIO by way of directly submitting the investigation report to the Special Court. It is for this reason only that in the same Section, the legislature has created the deeming fiction of 'investigation report' to be treated as the 'police report' for the purpose of framing of charges and for proceeding further in the matter for the trial. Hence, the matter



has to proceed with as per the procedure prescribed for a case ‘instituted on police report’ as per the provisions contained in the Cr.P.C./BNSS.

38. Furthermore, Section 2 (1)(h) of the BNSS defines “Complaint” as:

“(h) complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some person, whether known or unknown, has committed an offence, but does not include a police report.”

(emphasis supplied)

39. Since Section 2(1)(h) of the BNSS explicitly excludes a ‘police report’, and Section 223 of the BNSS i.e. the source of the right for a pre-cognizance hearing is located within the Chapter XVI (“Complaints to Magistrates”) and applies exclusively to cases instituted upon complaints, it cannot be said that it would apply to a document that has been statutorily deemed to be a “police report”.

ii) Special Statutes override General Law

40. It is well settled that where a special enactment prescribes a separate procedure, the same ordinarily prevails over the procedural provisions contained in general law. The principle of *generalia specialibus non derogant* i.e. ‘general law must yield to special law’ is firmly entrenched in Indian jurisprudence. Where a special statute provides a distinct procedure, the general provisions of criminal law stand excluded to the extent of inconsistency. Hence, special enactments prevail over general criminal procedure in matters of conflict.

41. The Act, 2013 is a special statute, which, as observed above, provides a complete and self-contained procedure for investigation, prosecution,



and trial of corporate offences. The criminal/punitive provisions under the Act, 2013 were enacted with the specific legislative objective of addressing complex corporate frauds through specialized mechanisms, including the establishment of Special Courts. The Act, 2013, in addition to providing for establishment or designation of Special Courts, also specifically provides for the procedure to be followed by the Special Court while taking cognizance.

42. As culled out herein hereinabove, Sections 435 and 436 of the Act, 2013 provide for establishment of Special Courts for the purpose of providing speedy trial for offences under the Act, 2013. Further, Section 436 provides for cognizance by the Special Courts either on police report or upon a complaint in that behalf. A bare reading of Section 436(1)(d) reflects that there is no statutory requirement of affording a pre-cognizance hearing to the accused before taking cognizance upon a complaint. The provision is clear in its design and does not contemplate any preliminary opportunity of hearing before cognizance is taken. Therefore, it cannot be said that the Act, 2013 is silent on the aspect of procedure for cognizance; rather, it provides a specific mechanism *without any statutory requirement of pre-cognizance notice*. The legislative intent is to ensure expeditious trial of corporate offences by removing procedural hurdles that otherwise apply under general criminal law.

43. Reference in this regard can also be made to **Section 4 read with Section 5 of the BNSS**, which itself clarifies that the provisions of the BNSS shall not supersede the procedure prescribed by any special law for the time being in force. Accordingly, since the Act, 2013 lays down its own procedure for cognizance, the general provisions of the BNSS stand excluded *to the extent of inconsistency*.



44. The overriding effect of the Act, 2013 over the general provisions of the BNSS is further reinforced by Section 438 of the Act, 2013, as the said provision expressly stipulates that provisions of the Cr.P.C. (now the BNSS) shall apply to proceedings before Special Courts constituted under the Act, 2013 only ***insofar as they are not inconsistent with the provisions of the Act.*** The statute thereby creates a clear hierarchy: wherever the Act, 2013 prescribes a distinct procedure, that procedure prevails, and the general criminal procedure i.e. the BNSS stands excluded to the extent of inconsistency. Thus, the legislative intent is unambiguous that the Special Courts are to follow the scheme of the Act, 2013, and not be governed by procedural requirements under the BNSS to the extent of the inconsistency therewith.

45. Hence, the special procedure under the Act, 2013 overrides the general provisions of the BNSS wherever inconsistency arises. Section 436(1)(d) of the Act, 2013, which empowers the Special Court to take cognizance of offences upon a complaint, is clear in its design and does not contemplate any preliminary opportunity of hearing before cognizance is taken. The reason for not including the pre-cognizance hearing in the provisions of the Act, 2013 is that the hearing of the concerned company, person or the accused is already inbuilt in the special procedure prescribed for the investigation of the case, where the statements on oath of all these entities are recorded by the investigating officer who was already having and exercising power of a Civil Court in that regard. Reliance on Section 223 of the BNSS to direct issuance of notice prior to cognizance is therefore impermissible, as it directly contradicts the scheme of the Act, 2013.



46. Thus, in case of prosecution under Act, 2013, the Special Court is not required to invoke the procedure provided under the BNSS, including Section 223, as the Act, 2013 being a special statute, empowers and provides the procedure for Special Courts to take cognizance directly, *without any statutory requirement of affording a pre-cognizance hearing* to the accused as well as without the accused being committed to it for trial.

iii) Distinction Between Private Complaints and Statutory Complaints by Public Servants

47. This Court finds substance in the contention advanced on behalf of the respondent that prosecution complaints filed by the SFIO stand on a materially different footing from private complaints instituted by individuals. There is distinction between a private complaint filed by an individual and a statutory complaint filed by public servants pursuant to a detailed investigation under Section 212 of the Act, 2013. In a private complaint, the Magistrate ordinarily proceeds solely upon allegations made by the complainant and evidence adduced at the pre-summoning stage. However, the criminal complaint in question in the present case arises from a statutory investigation conducted by Inspectors duly appointed by the Director, SFIO, who are public servants within the meaning of law and who are conferred powers to record statements on oath and of Civil Court for conducting investigation. Thus, the findings of the investigation, embodied in the complaint filed by the SFIO, carry special statutory sanctity, evidentiary value as well as undergo prior examination by the MCA/Central Government, and, therefore, cannot be equated with mere allegations in a private complaint.



48. The investigation report under Section 212(12) of the Act, 2013 is prepared by duly associating the concerned company and officers and employees of such concerned company and the same is based on statements made by these persons made on oath, and on the documents and materials provided by them. The said report is first submitted to the MCA/Central Government, and not directly to the Special Court. The MCA/Central Government, in exercise of its powers under Section 212(14) of the Act, 2013, then examines the report and if the report is found satisfactory, the MCA/Central Government issues a direction to initiate prosecution. Thus, the statutory process itself ensures effective participation of concerned persons in the investigation and a two-tier scrutiny of the same, first by public servants, and then by the MCA/Central Government, is conducted before prosecution is launched. In this backdrop, there is no justification for issuing a pre-cognizance notice to the accused to hear them before cognizance, as such a requirement would fail the scheme of the Act, 2013 and undermine the statutory investigation process and initiation of prosecution after examination of the investigation report by the MCA. Thus, importing the requirement of a pre-cognizance notice into proceedings under the Act, 2013 from provisions of a general law i.e. the BNSS, despite the statutory recognition of their distinct character, is unwarranted and contrary to both - the scheme of the Act, 2013 and the rationale of Section 223 of the BNSS itself.

49. In the present case, the complaint in question was filed by the SFIO only after the investigation conducted unearthed substantive findings, *inter alia*, that the affairs of the company were conducted in a fraudulent manner. These findings, having emerged from a statutory investigation by public servants and examined by the MCA/Central Government, reinforce the legislative intent that



prosecutions under the Act, 2013 must proceed expeditiously without being fettered by pre-cognizance notice requirements.

50. In view of the foregoing grounds the directions for issuance of pre-cognizance notice as envisaged under Section 223 of the BNSS in a prosecution initiated under the Act, 2013, are alien to the statutory scheme as provided under the Act, 2013 and will frustrate the object of the Act, 2013. The proviso to Section 223 of the BNSS appears to have been enacted primarily to safeguard persons proposed to be arrayed as accused in complaints not founded upon prior statutory investigation. Hence, the rationale underlying such provision cannot be mechanically extended to prosecution complaints instituted after completion of investigation by a specialized statutory agency such as the SFIO, particularly where the statute itself creates a deeming fiction treating the investigation report as a police report.

51. Thus, there is merit in the contention of learned senior counsel for the SFIO that the Act, 2013 envisages a distinct procedure for complaints filed by private persons, and for the complaints filed by agencies authorised by the State. In such legislative scheme, mechanical extension of Section 223 of the BNSS is unwarranted as it would dilute the procedure enacted by the legislature under the Act, 2013, which is a special statute, with its own procedure in respect of complaints filed by the SFIO, independent of the provisions of Cr.P.C./BNSS.

iv) Scope of Jurisdiction of Special Courts as a Court of Session
under Companies Act, 2013 & Jurisdictional Application of Section
223, BNSS



52. A combined reading of Sections 223 and 213 of the BNSS along with Sections 436(1)(d) and 438 of the Act, 2013 makes it abundantly clear that the Special Court of Sessions Judge under the Act, 2013 is not governed by Section 223 of the BNSS while taking cognizance. Rather, as observed in foregoing paragraphs, it is governed exclusively by Section 213 of the BNSS read with Section 436(1)(d) of the Act, 2013.

53. By its express language, Section 223 of the BNSS applies only to “*a Magistrate having jurisdiction while taking cognizance of an offence on complaint.*” The present complaint, however, arises under the Act, 2013 and has been filed before a Special Court designated under Section 435(2)(a) of the Act, which is presided by *Sessions Judge or Additional Sessions Judge* for serious corporate offences including those under Sections 447 and 448 of the Act.

54. A Special Court presided over by learned Sessions Judge or learned Additional Session Judge cannot be equated with, or read into, as a Magistrate’s Court for the purpose of applying Section 223 of the BNSS. That Section 223, by its express language, governs the manner in which a Court of Magistrate ***having jurisdiction in the matter*** takes cognizance of offences on complaint. On the other hand, Act, 2013 empowers a Special Court of Sessions Judge level to proceed on the basis of a complaint without reference to a pre-cognizance hearing. Hence, importing Section 223 of the BNSS into such proceedings is impermissible. While the principles of cognizance under the BNSS may broadly apply to all criminal courts, they cannot override the specific scheme of the Act, 2013, which prescribes its specific categories of Courts based on nature of offences to be dealt with by them as well as the procedure for cognizance under Section 436(1)(d) read with Section 438 of the Act, 2013. Doing so disregards the statutory



distinction between Sessions-level Special Courts vis-à-vis a Court of Magistrate as mentioned under Section 223 of the BNSS, and undermines the legislative intent of creating a differentiated framework for trial of corporate offences by both type of Special Courts as provided under Act, 2013

55. The scheme of the Act, 2013 therefore governs the manner in which cognizance is taken by Special Courts, and reliance on Section 223 of the BNSS in this context would be legally untenable.

56. Therefore, a combined reading of Sections 223 and 213 of the BNSS along with Section 436(1)(d) and 438 of the Act, 2013 makes it abundantly clear that the Special Court under the Act, 2013, functioning as a Court of Sessions, is not covered by Section 223 of the BNSS while taking cognizance. Rather, it is governed exclusively by Section 213 of the BNSS read with Section 436(1)(d) of the Act, 2013. As such, the Special Court is not required to afford any opportunity to the accused at the stage of cognizance, and the legislative intent is to streamline the process before a Sessions Court in contrast to the procedure before a Magistrate. Any attempt to import the proviso of Section 223 into the scheme of Section 213 would amount to overriding judicial legislation and its express statutory framework.

Authorities relied upon by learned senior counsel on behalf of petitioner

57. The reliance placed by learned senior counsel for the petitioner upon the judgments of the Hon'ble Supreme Court in ***Yash Tuteja (supra)***, ***Tarsem Lal (supra)***, and ***Kushal Kumar Aggarwal (supra)*** is also misplaced. The aforesaid judgments were rendered in the context of proceedings under the PMLA and the particular statutory framework governing prosecutions under the PMLA **which**



does not contain a statutory legal fiction similar to Section 212 (15) of the Companies Act, 2013. This Court is unable to accept the contention of the petitioner that the said judgments lay down an inflexible rule that whenever a special enactment incorporates the Cr.P.C./BNSS, the entirety of Chapter XVI relating to complaint cases must necessarily apply. The applicability of procedural provisions must always be examined in the context of the statutory scheme of the enactment in question. Under the Act, 2013, Section 212(15), which statutorily treats the SFIO investigation report as a police report, and the extensive nature of investigation by an officer having powers to record statements on oath and having powers of Civil Court for collection of evidence and ensuring full association of the concerned persons with the investigation with a right to get copy of investigation report, all together constitute a significant distinguishing feature. Thus, contrary to the contention of the petitioner, the said provisions materially differentiate prosecutions under the Act, 2013 from proceedings under the PMLA.

58. Similarly, the judgment of the Hon'ble Supreme Court in *Sanjabij Tari (supra)* though rendered in the context of proceedings under the NI Act, amply recognizes the broader principle that general procedural provisions contained in the BNSS cannot be applied in a manner that defeats or dilutes the special statutory framework governing prosecutions under special enactments. This Court is of the considered opinion that the principle emerging from the aforesaid judgment is equally applicable to prosecutions instituted under the Act, 2013, where the Special Court is also authorized to convert any proceedings into summary trial and vice-versa, subject to the conditions prescribed. Once the legislature has consciously provided a separate statutory mechanism for



investigation and prosecution through the SFIO, coupled with a deeming fiction treating the investigation report as a police report, the proviso to Section 223 of the BNSS cannot be invoked to introduce an additional pre-cognizance stage which is not contemplated under the special enactment.

59. Further, contrary to the submission of learned senior counsel for the petitioner, this Court also does not find any illegality in the impugned order merely because the proceedings were administratively registered as a complaint case. Mere nomenclature or categorization in the filing register cannot override the true legal character of proceedings as emerging from the statutory framework. As mentioned above, the nomenclature as ‘complaint in writing’, has been used and to emphasize the fact that the prosecution can be initiated after due approval of the Central Government to be granted on appreciation of the investigation report and the same cannot be initiated by the investigating officer directly by submitting the report to the Special Court. This is a deliberate deviation from the procedure prescribed under Cr.P.C./BNSS. Otherwise also, the Act, 2013 has made it totally clear that the matter is to be proceeded with as the case instituted on a police report.

60. Consequently, it is held that prosecution complaints instituted by the SFIO pursuant to investigation under Section 212 of the Act, 2013 are not governed by the proviso to Section 223 of the BNSS, and the proposed accused have no vested right to claim a pre-cognizance hearing before the Special Court.

61. As culled out from the foregoing discussion, this Court is of the considered view that where the legislature has enacted a comprehensive procedural framework governing a particular subject, the provisions thereof must be construed in a manner that give full effect to the statutory scheme.



62. The legislative intent underlying the Companies Act, 2013 is unambiguous. Section 212(15) of the Act, 2013 expressly provides that the investigation report submitted by the SFIO shall be treated as a police report filed under the Act, 2013. The legislative command is, therefore, not merely to accord evidentiary value to such report, but to place it, by a legal fiction, in the same position as a police report for the purposes contemplated by the statute. Once the legislature has expressly directed that the SFIO investigation report be treated as a police report, the Court is bound to give full effect to such legal fiction and carry it to its logical conclusion.

63. The legal fiction contained in Section 212(15) of the Act, 2013, read in conjunction with Sections 2(1)(h) and 223 of the BNSS, excludes the application of the pre-cognizance hearing requirement contemplated for complaint cases under Chapter XVI of the BNSS. The statutory scheme contemplates that, upon presentation of the complaint and the investigation report before the Special Court, the question of cognizance is to be considered on the basis of such material. The Act, 2013 does not envisage the interposition of an additional hearing at the pre-cognizance stage. Significantly, while the legislature has made detailed and specific provisions governing investigation, filing of the complaint, presentation of the SFIO report, assumption of jurisdiction by the Special Court and the conduct of subsequent proceedings, it has not incorporated any requirement of a pre-cognizance hearing to the proposed accused.

64. The words employed by the legislature, where clear and unambiguous, must ordinarily be given their plain and natural meaning. Equally, it is well settled that a statutory provision cannot be interpreted in isolation. The enactment must be read as a whole so as to ascertain and effectuate the legislative



intent, and an interpretation which renders any part of the statutory scheme redundant, superfluous or unworkable must be eschewed. A construction founded upon an unduly narrow or fragmented reading of a provision cannot be permitted to defeat the object sought to be achieved by the statute.

65. Accordingly, the impugned order dated 11.02.2026 (**Annexure P-1**) passed by learned Additional Sessions Judge, Gurugram does not suffer from any illegality, perversity, or jurisdictional error warranting interference by this Court in exercise of its inherent jurisdiction under Section 528 of the BNSS.

66. Consequently, the present petition is dismissed.

67. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(SUBHAS MEHLA)
JUDGE

07.07.2026

Manisha

Whether Speaking/Reasoned: YES/NO

Whether Reportable: YES/NO