"C.R"

A. BADHARUDEEN, J.

Crl.M.C No.7741 of 2025-G
and
Crl.M.C.No.8392 of 2025

Dated this the 21st day of November, 2025

COMMON ORDER

Crl.M.C.No.7741 of 2025-G has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (`BNSS' for short) by the petitioner, who is arrayed as the 1st accused in Crl.M.P.No.1356/2024 on the files of the Enquiry Commissioner and Special Judge, Thiruvananthapuram. The 1st respondent is State of Kerala and the 2nd respondent is the complainant in the above Crl.M.P. Allowing Crl.M.Appl.No.2/2025, additional 3rd respondent also was impleaded, since it was found that he had filed complaint and the same resulted in Annexure 6 and 7 orders therein. The prayer in this petition is to quash Annexure 5 private complaint (Crl.M.P.No.1356/2024) and Annexure A8 order dated 14.08.2025.

2. Crl.M.C.No.8392/2025 has been filed by the State of Kerala arraying the complainant in Crl.M.P.No.1356/2024 as the sole respondent. The prayers in Crl.M.C.No.8392/2025 are as under:

"i. Set side Annexure IV order dated 14.08.2025 to the extent it makes derogatory and disparaging remarks/observations against the competent authorities in the Government and also to the extent it orders to proceed with the complaint without obtaining prosecution sanction u/s.19 of the PC Act, 1988.

ii. Expunge the disparaging and adverse remarks or observations made by the Special Court in paragraphs 77 to 81, 91 to 97 and 106 to 110 of Annexure IV order against the competent authority in the Government and constitutional functionaries who were not parties to the proceedings.

iii. Pass such other order or further relief as this Hon'ble Court may deem fit and proper in the interest of justice."

3. I shall refer the parties in these matters as M.R.Ajith Kumar, the petitioner in Crl.M.C.No.7741/2025, the 2nd respondent, Neyyattinkara P.Nagaraj in Crl.M.C.No.7741/2025 as complainant and Sri P.V.Anwar as the additional 3rd respondent. State of Kerala represented by VACB will be referred as `prosecution'.

4. Heard the learned Senior Counsel for the accused Sri B.Raman Pilla appearing for M.R.Ajith Kumar; Sri M.P.Shameen

Ahamed, appearing for Neyyattinkara P.Nagaraj and Advocate Sri Muhammed Firdouz, appearing for P.V Anwar. Also heard the learned Director General of Prosecution representing State of Kerala. Perused the documents.

5. I shall refer the Annexures referred in Crl.M.C.No.7741 of 2025, for discussion.

6. As per Annexure 5 Crl.M.P.No.1356/2024, Sri Neyyattinkara P.Nagaraj filed complaint before the Vigilance Special Court, Thiruvananthapuram arraying M.R.Ajith Kumar as the 1st accused, one P.Sasi, as the 2nd accused and other accused persons to be revealed during investigation. The allegation in Annexure A5 is that the accused persons therein committed offences punishable under Section 7(c) and Section 13(1)(e) read with 13(2) of the Prevention of Corruption Amendment Act, 2018 (`PC Act, 2018' for short) w.e.f 26.07.2018 read with Section 34 of the Indian Penal Code, 1860 (`IPC' for short). According to Neyyattinkara P.Nagaraj, he is a public spirited citizen and as a member of the society he used to file public interest litigation before various forum with a view to

raise various genuine grievances of general public to render justice. He has highlighted certain cases, showing his intervention in this regard. Coming to the crux of the allegation as extracted by the complainant, the same reads as under:

> *"That the 1st Accused while working as a public servant in the capcity of Deputy Police Superindent (DSP), Police Superindent(SP), Deputy Inspector General (DIG) of Police, Addl. Director General of Police (ADGP) Law and order, Thiruvananthapuram and other Districts in Kerala Police Department Service during the period 1994-2024 with the intention of amasing enormous assets by any means and in pursuance there of, the accused abused his official portions by corrupt and illegal means performed dishonestly public duty, acquired huge assets during the said period, purchased 10 cents of landed property (Rs.7 Crores) in his name and 12 cents of property for Rs.8,40,00,000/- in his benami brother-in-law's name which fetch Rs.70,00,000/- per cent in posh area near Kowdiar Palace-Golf Links road, comprised in Peroorkada Village, Thiruvananthapuram city and the Accused is constructing a 3 storied big mansion having 12000 Square feet spending crores of rupees in the 10 cents of property plot, the accused's wife Sreedevi Ajithkumar and 2 children (one son and one daughter) and brother in law who were having no independent source of income during the said period of which assets worth crores of rupees including movable immovable properties is found and disproportionate*

to his known source of income for which he could not satisfactorily account for, in excess of his total income during the said check period, and amassed wealth in connection with corrupt and illegal means in solar cheating cases, nexus with gold smuggling mafia, accepting bribes for avoiding prosecution etc. the accused could not satisfactorily account for the possession of the said disproportionate assets, the expenditure and thereby the accused has committed offences punishable under the above provisions of law. The offending properties are situated near to the private helipad of Business Tykoon M.A Yusaf Ali, Managing Director, Lulu Mall Group of Companies Overseas.. The plots values are day by day increasing in this area."

He has produced document Nos.1 to 3 along with the complaint.

7. When the complaint was lodged by Sri Neyyattinkara P.Nagaraj, the prosecution produced Annexure 6 Vigilance enquiry report dated 06.03.2025 and Annexure 7 enquiry report dated 05/10/2024 submitted by the high level team, before the Special Court. The learned Special Judge while pursuing the complaint addressed Annexures 6 and 7 reports which were originated prior to filing of Annexure 5 complaint and raised the following points for determination as extracted in paragraph 47 of Annexure 8 order.

"47. The points for consideration are;

(1) Whether the complainant has the locus standi to file the complaint alleging an offence under the PC ACT, 1988 (Amended in 2018)?

(2) Whether a private complaint without attaching a sanction, from the competent authority, alleging offences punishable under the Prevention of Corruption Act, 1988 (amended Act 2018) by a public servant would be maintainable before the Special Judge constituted under the Act to try the offences under the Act?

(3) Whether the report filed by the enquiry officer has to be accepted or rejected?

(4) If the report is not acceptable, can this court direct the Director, VACB, to register a case and investigate the offence punishable under the P.C. Act, 1988 (amended in 2018)?

(5) Whether the complaint allegations, the documents he produced, the materials collected by the enquiry officer, and produced before the court, would show a prima facie case to proceed further with the complaint?

(6) If the fourth option is not available, can this court proceed with the complaint following the procedure of Sec 223 of BNSS, 2023?"

8. Thereafter the learned Special Judge vehemently discussed regarding the allegations in the complaint and the findings in Annexures 6 and 7, and finally passed the following order:

"(1) The complainant has the locus standi to file the complaint alleging an offence under the PC ACT, 1988(Amended in 2018) against the respondents.

(2) A private complaint without attaching a sanction, from the competent authority, alleging offences punishable under the Prevention of Corruption Act, 1988 (amended Act 2018) by a public servant would be maintainable before the Special Judge constituted under the Act to try the offences under the Act, 1988.

(3) The inquiry report is not acceptable and is rejected.

(4) This court does not have the power to direct the Director, VACB, to register a case and investigate the offence punishable under the P.C. Act, 1988 (amended in 2018).

(5) The complaint allegations, the documents he produced, the materials collected by the enquiry officer, and produced before the court, would show a prima facie case.

6) There are sufficient materials to proceed further

following the procedure of Section 223 of BNSS, 2023."

9. While canvassing quashment of Annexure 5 complaint as well as Annexure 8 order, the learned Senior Counsel Sri B.Raman Pilla pointed out that in this matter before filing of Annexure 5 complaint, as per Annexure 1 dated 01.09.2024 Sri M.R.Ajith Kumar addressed the Chief Minister of Kerala requesting to address the allegation raised against him by P.V.Anwar (former member of the Kerala Legislative Assembly) complaining that the allegations are baseless. Similarly, as per Annexure 2 petition dated 01.09.2004 Sri M.R.Ajith Kumar addressed the then D.G.P and State Police Chief, seeking the same relief. Accordingly, Annexure 3 G.O.(Rt) No.3911/2024/GAD dated 03.09.2024 was issued by the Additional Secretary, Government of Kerala constituting a high level committee to conduct an enquiry regarding the allegations in the complaint raised by Sri P.V.Anwar. As on 19.01.2024 as per Annexure 4 G.O(Rt) No. 147/2024/VIG dated 19.09.2024, on finding that the allegations were having vigilance angle, a detailed enquiry by the VACB was recommended. According to the learned Senior Counsel, as the outcome of the same, Annexures 6 and 7 reports were filed

finding that the entire allegations raised by Sri P.V.Anwar, pointing out 5 specific allegations, were baseless. The learned Senior Counsel Sri B.Raman Pillai submitted further that the petitioner is not a complainant at the time when Annexures 3 and 4 Government Orders were issued though in this regard Advocate M.P.Shameen Ahamed submitted that Neyyattikara P.Nagaraj also lodged a complaint on 28.09.2024. Evidently Annexures 3 and 4 Government Orders were issued to enquire into the allegations of Sri P.V.Anwar. Even though Annexures 6 and 7 reports were filed on the basis of an enquiry conducted in terms of Annexures 3 and 4 Government Orders, no challenge was raised by Sri P.V.Anwar against the said reports. In this connection, Sri Muhammed Firdouz A.V, the learned counsel for Sri P.V.Anwar submitted that, in fact, Sri P.V.Anwar came to know about filing of the reports just before filing of Crl.M.C No.7741/2025 by Sri M.R.Ajith Kumar and thereby he did not obtain an opportunity to challenge the same before this Court. It is also pointed out that he has serious objection to the reports which gave clean chit to M.R.Ajith Kumar, without support of any materials, and it is at this

juncture he has been forced to get himself impleaded as additional 3rd respondent in this matter.

10. Sri B.Raman Pilla, the learned Senior Counsel has taken attention of this Court to Annexure 9, enqiry proceedings initiated as well as Annexures 10 to 18, to impeach the credibility of Sri P.V.Anwar. I am not inclined to give much emphasis to those documents as the same have no much significance.

11. The point argued by Sri B.Raman Pilla is that when a private complaint is lodged before a Special Court, the Special Court must insist for production of sanction under Section 19 of the PC Act, 2018, either to forward the same to police for investigation or to proceed under Section 223 of BNSS. He also argued that as far as Annexures 6 and 7 reports are concerned, either of the same were not originated at the instance of the complainant or the same were not filed before the Special Court with a prayer either to accept or reject the same. Therefore, the Special Court while dealing with a private complaint, doesn't have any authority to address on the illegality of Annexures 6 and 7 reports to hold that the same are either acceptable

or the same are liable to be rejected. Therefore, for the said reason, the findings entered into by the Special Court, as to Annexures 6 and 7 are without jurisdiction and the said finding is liable to be set aside. It is pointed out by the learned Senior Counsel further that, in this matter, by addressing the complaint as well as Annexures 6 and 7 reports, the learned Special Judge decided to proceed under Section 223 of BNSS as well as the subsequent provisions, thereby the Special Court took cognizance of the matter without the sanction under Section 19 of the PC Act, 2018. Therefore, Annexure 8 order is illegal. He also justified Annexures 6 and 7 reports to contend that the complaint as such is liable to be quashed. In this connection, the learned Senior Counsel pointed out grounds D, E, F, G H and I in special. The same are as under:

> *"D. In **Anil Kumar V. M.K.Aiyappa** reported in (2013)10 SCC 705 the Hon'ble Supreme Court considering the correctness of the view of the High Court of Karnataka that the special judge could not have taken notice of the private complaint unless the same was accompanied by a sanction order, irrespective of whether the court was acting at a pre-cognizance stage or the post cognizance stage, if the complaint pertains to a public servant and the order of*

the High court quashing the complaint and the order of the Special Judge (para 5 of the judgment). The Hon'ble Supreme Court dismissed the challenge against the above order of High Court and interalia held that The judgments refereed to hereinabove clearly indicate that the word "cognizance" has wider connotation and is not merely confined to the stage of taking cognizance of the offence (para 15). The Hon'ble Supreme Court concluded that "once it is noticed that there was no previous sanction, as already indicated in various judgments referred hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under section 156(3) Cr.P.C." (para 21).

E. In ***L Narayanaswamy Vs. State of Karnataka and others*** *reported in (2016)9 SCC 598 one of the questions of law framed by the Hon'ble Supreme Court was*

> *"10.1 (i) Whether an order directing further investigation under section 156(3) Cr PC can be passed in relation to public servant in the absence of valid sanction and contrary to the judgments of this Court in* ***Anil Kumar V. M.K.Aiyappa*** *and* ***Manharibhai Muljibhai Kakadia V. Shaileshbhai Mohanbhai Patel****?"*

After quoting with approval the dictum laid down in the above decisions the Hon'ble Supreme Court held that " Having regard to the ratio of the aforesaid judgment, we have no hesitation in answering the questions of law, as formulated in para 10 above, in the negative. In other words, we hold that an order directing further investigation under section 156(3) CrPC cannot be passed in the absence of valid sanction".

F. The dictum laid down in ***Anil Kumar V. M.K.Aiyappa*** *(2013)10 SCC 705 and* ***Narayanaswamy Vs.***

State of Karnataka *(2016)9 SCC 598 was considered by another bench of Hon'ble Supreme Court in* ***Manju Surana vs. Sunil Arora*** *reported in (2018)5 SCC 557 and it was held as follows:*

> *"33. The catena of judgments on the issue as to the scope and power of direction by a Magistrate under Chapter XII & XIV is well established. Thus the question would be whether in cases of the PC Act, a different import has to be read qua the power to be exercised under section 156(3) CrPC i.e can it be said that on account of section 19(1) of the PC Act, the scope of inquiry under Section 156(3) CrPC can be said to be one taking "cognizance" thereby requiring the prior sanction in case of public servant? It is trite to say that prior sanction to prosecute a public servant for the offences under the PC Act is a provision contained under Chapter XIV CrPC. Thus, whether such a purport can be imported into Chapter XII CrPC while directing an investigation under section 156(3) CrPC, merely because a public servant would be involved, would be an answer".*

After holding so the Hon'ble Supreme Court opined that the " The complete controversy referred aforesaid and the conundrum arising in respect of interplay of the PC Act offences read with CrPC is thus required to be settled by a larger bench"(para 35) and the matter was directed to be placed before Hon'ble the Chief Justice of India for being placed before a bench of appropriate Strength. The above judgment show the bench wanted to resolve the controversy regarding the directions by special courts to proceed under chapter 12 of CrPC and there was no doubt regarding proceeding under Chapter 14 or 15 of CrPC. The fact that the controversy was referred to a larger bench only in relation to Chapter 12 shows that law is settled regarding proceedings under other chapters, such as Chapter 14 or 15. Specifically, it is clear that sanction is a prerequisite to proceed under those chapters. It may be noted that the impugned judgment relates to exercise of

power by the Special Judge under Chapter XVI of BNSS which corresponds to Chapter XV of CrPC. It is pertinent to note that the question referred is not yet decided and it is still pending consideration of the larger bench.

G. On two occasions, one occasion in December 2018 and recently in March 2025, two different Division Benches of the Hon'ble High Court of Kerala had occasion to decide the method to be adopted by the Special Courts till a decision is taken by the larger bench of Hon'ble Supreme Court. The law was clearly and categorically declared by the division bench on both occasions in ***Muhammed V.A. and others V. State of Kerala and others*** *reported in 2019(1)KHC 239 and* ***A.K.Sreekumar V. State of Kerala*** *that the dictum laid down in* ***Anil Kumar V. M.K.Aiyappa*** *(2013)10 SCC has to be followed till a final decision is taken by the Supreme Court. In this context it may be noted that one of the questions referred to the division bench which decided A.K.Sreekumar V. State of Kerala was*

> *Whether the ratio laid down in AnilKumar (2013) 10 SCC 705] is applicable to cases, post amendment of the P.C Act (vide: Act 16 of 2018), when by inserting Section 17-A and Section 19 (1) (11) to the P.C. Act, the legislature has expressly conveyed its otherwise implicit intent to treat the stage of the investigation as different from the stage cognizance for the purpose of the P.C. Act.*

The Division while answering the above reference held that the courts are bound to follow Anil Kumar until the reference in Manju Surana is answered and opined that it is necessary to answer the other questions as the same are purely academic.

H. The opening phrase in Section 223 of BNSS " A magistrate having jurisdiction while taking cognisance of an offence ..." leaves no doubt that the section applies to stage of taking cognizance. The phrase " while taking cognizance" in the section indicates that the particular section is applicable only during the process of taking

cognizance, not at any other stage. The fact being so the finding in the impugned order that " there are sufficient materials to proceed further following the procedure of section 223 of BNSS,2023" is legally erroneous and unsustainable without sanction from the competent authority.

I. It is most respectfully submitted that any Court which is considering a complaint can indeed deal with a complaint either in a pre-cognizance stage or post-cognizance stage and in the light of the above clear judicial pronouncements when the complaint is against the public servant the law is clear that sanction is prerequisite to proceed regardless of the stage. In any view of the matter the impugned order is legally unsustainable whether considered as one passed in the pre-cognizance stage or post-cognizance stage."

12. Thus the arguments at the instance of the learned Senior Counsel appearing for Sri M.R.Ajith Kumar is that the Apex Court in ***Anil Kumar v. M.K.Aiyappa*** (*supra*) considered the finding of the High Court by quashing the order passed by the Special Judge after holding that the Special Judge could not have taken notice of a private complaint against a public servant unless the same was accompanied by a sanction order under Section 19(1) of the PC Act, 1988, irrespective of whether the court was acting at a pre cognizance stage or at the post cognizance stage. While addressing correctness of the said order, the Apex Court held in paragraph Nos.11 and 15 that *where jurisdiction is exercised on a complaint filed in terms of*

Section 156(3) or Section 200 Cr.P.C, the Magistrate is required to apply his mind, and in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) Cr.P.C for investigation against a public servant without a valid sanction order under Section 19(1) of the PC Act, 1988. Further it was held that *the above word `cognizance' has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge under the Prevention of Corruption Act, 1988 refers a complaint for investigation under Section 156(3) Cr.P.C, obviously, he has not taken cognizance of the offence and, therefore, it is a precognizance stage and cannot be equated with post-cognizance stage.* It was held further that *when a Special Judge takes cognizance of the offence on a complaint presented under Section 200 Cr.P.C, the next step to be taken is to follow up under Section 202 Cr.P.C.* Therefore, the contention of the learned Senior Counsel appearing for M.R.Ajith Kumar is that the decision to proceed under Section 200 Cr.P.C or under Section 223 of BNSS is akin to taking cognizance. Apart from that the learned Senior Counsel raised a contention that either to

forward a complaint filed before a Special Judge under the PC Act for investigation under Section 156(3) Cr.P.C or under Section 175(3) BNSS, sanction under Section 19(1) is mandatory. For the same reasons, when the Special Judge applied his mind to proceed further even if it is held as pre-cognizance stage, for which also sanction under Section 19(1) is mandatory and, therefore, Annexure 8 order is illegal.

13. Advocate M.P.Shameen Ahamed, who appears for Sri Neyyattinkara P.Nagaraj repelled the contentions at the instance of the learned Senior Counsel appearing for M.R.Ajith Kumar on multiple grounds. According to Advocate M.P.Shameen Ahamed, after issuance of Annexures 3 and 4 orders, as on 28.09.2024, Sri Neyyattinkara P.Nagaraj also filed a complaint raising serious allegations against Sri M.R.Ajith Kumar. According to him, as per Annexure 6 report, subordinate officers of Sri M.R.Ajith Kumar carried out enquiry in a biased manner on the allegations and collected materials to support the contentions raised by Sri M.R.Ajith Kumar by ignoring the materials which would fasten crimial

culpability on him. Accordig to Advocate M.P.Shameen Ahamed, the reports have no impact on the private complaint Annexure 5 filed by Sri Neyyattinkara P.Nagaraj and when such a complaint had been filed, a duty is cast upon the Special Judge either to forward the same to the police for investigation or to proceed under Section 223 of BNSS.

14. Advocate M.P.Shameen Ahamed also submitted that in this case, the Special Court rightly relied on the decisions reported in [2018 KHC 6224 : 2018 (2) KLT 315 : 2018 (5) SCC 557], ***Manju v. Sunil Arora and others***; [2013 KHC 4790 : 2013 (4) KLT 125, 2013 (10) SCC 705], ***Anil Kumar and Others v. M.K.Ayyappa and Another***, and found that the complaint could not be forwarded for investigation without sanction.

15. At this juncture, the learned Special Judge addressed the complaint with a view to proceed further under Section 223 of BNSS. According to Advocate M.P.Shameen Ahamed, Annexures 6 and 7 reports, in fact, were produced by the Legal Advisor for the Vigilance & Anti Corruption Bureau to negate the sustainability of

the allegations in Annexure 5 complaint and thereby the Special Court was inclined to address the same in order to see as to whether the reports were acceptable or not and finally found that the same were not acceptable for the reasons detailed in the impugned order. The specific point argued by Advocate M.P.Shameen Ahamed is that the argument advanced by the learned Senior Counsel for the petitioner that, by the impugned order the Special Judge took cognizance of the offences as per Annexure 5 complaint is erroneous and according to him the Special Court didn't take cognizance of the offences and the complaint is at the pre-cognizance stage till the Special Court decides after examination of witnesses and documents to summon the accused. Placing a decision of the Apex Court reported in [MANU/SC/1017/2025], ***Kallu Nat v. State of U.P and Ors.***, the specific point raised by the learned Advocate M.P.Shameen Ahamed is that, for the purpose of taking cognizance of an offence on the basis of a complaint received under Section 190(1)(a) of the Cr.P.C or under Section 210(1)(a) of BNSS, a Magistrate is required to examine upon oath, the complainant and any witnesses, and reduce

in writing the substance of their examination. This inquiry which is conducted by the Magistrate/Special Judge under Section 200 of Cr.P.C or under Section 223 of BNSS, cannot always mean, that cognizance of the offence alleged in the complaint has been taken by it, as the Magistrate is still empowered to take recourse to Section(s) 201 to 203 of Cr.P.C or under Sections 224 to 226 of BNSS, whereby he may simply bring the inquiry before it to and end, without an intention of proceeding further in terms of the Cr.P.C or BNSS. According to him, in the instant case, since the learned Special Judge, by the impugned order, only decided to proceed under Section 223 of BNSS and not reached the subsequent stages, it is not correct to say that the learned Special Judge took cognizance of the matter without obtaining sanction under Section 19(1) of the PC Act, 2018. According to the learned Advocate M.P.Shameen Ahamed, in order to say that the Special Court took cognizance of the case, it is necessary for the court to go further by examining upon oath the complainant and the witnesses present and the decision taken thereafter is the stage when one could say that the Special Court took

cognizance of the offences. Apart from ***Kallu Nat v. State of U.P and Ors.***'s case (*supra*), the learned Advocate M.P.Shameen Ahamed placed another decison of the Apex Court reported in [2025 Supreme (SC) 660 : 2025 KLT (OnLine) 1789 : 2025 LiveLaw(SC) 450], ***B.S. Yeddiyurappa v. A Alam Pasha & Ors.***, where the Apex Court considered a question as under:

> *"In case of a private complaint, whether Section 19 of the PC Act, more particularly parts (i) and (ii) of the First Proviso therein contemplates that sanction would be required only after the Magistrate first completes the stage of examining the complainant and/or causing a magisterial inquiry wherever necessary in terms of Section(s) 200 and 202 of the Cr.P.C respectively? In other words, whether the three conditions envisaged under the First Proviso namely that a complaint has been filed as per Part (i) and that the court has not only not dismissed such complaint but also explicitly directed the obtainment of sanction as per Part (ii), necessarily implies that it is open for the Magistrate to proceed in terms of Chapter XV more particularly under Section(s) 200, 202 and 203 even without the grant of sanction under Section 19 of the PC*

Act? If so, whether such an interpretation is limited only for the purpose of "cognizance" under Section 19 of the PC Act?"

16. In paragraph 21, the Apex Court held as under:

"We are of the considered view that scanning of the provisions under Sections 156(3), 173(2), 190, 200, 202, 203 and 204 of the Cr.P.C would, prima facie, reveal that while directing for an investigation and forwarding the complaint therefor, the Magistrate is not actually taking cognizance. However, since the said question is referred as per the above judgment, judicial discipline and propriety dissuade us from proceeding further with the case and hence, we order to tag the camptioned matters also along with the matter(s) already referred. Ordered accordingly.

The judgment in ***Manju Surana*** *(supra) would reveal that the matters were referred to larger Bench on 27.03.2018. Considering the fact that question involved is a matter of relevance and such issues arise frequently for consideration before Courts, we are of the considered view that an earlier decision on the question referred is solicited.*

Registry is directed to place these matters before the Hon'ble the Chief Justice of India for appropriate orders."

17. Another decision of the Apex Court reported in [MANU/SC/0703/2015 : (2015) 9 SCC 609], ***S.R.Sukumar v. S.Sunaad Raghuram***, also has been placed by the learned Advocate M.P.Shameen Ahamed, the learned counsel for Neyyattinkara

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P.Nagaraj, to contend that even after examination of the witness or witnesses, as provided under Section 223 of BNSS, no cognizance is said to be taken. He has placed the decision of this Court reported in [2025(1) KHC 596 : 2025(1) KLT 811] ***Suby Antony v Susha***; for which also much relevance was placed by the learned Special Judge in Annexure 8.

18. The learned counsel appearing for Sri P.V. Anwar elaborated on the allegations raised in the complaint filed by Sri P.V. Anwar and submitted that no effective enquiry or investigation was conducted as regards to the specific allegations. It is pointed out that a subordinate officer under the control of Sri M.R. Ajithkumar had collected materials to justify him, which resulted in Annexure 6 report. According to the learned Senior Counsel for the petitioner, the petitioner has the freedom to challenge Annexures 6 and 7 independently and without prejudice to the same, he has been contesting this matter. Otherwise, the finding of the Special Court rejecting the reports is to be confirmed permitting the Special Court to go further with Annexure 5 complaint.

19. The crucial question that arises for consideration herein is as to, when a Magistrate or a Special Judge under the Prevention of Corruption Act can be said to have taken cognizance of a case in a private complaint filed under Section 190 Cr.P.C or under Section 200 of the BNSS before a Magistrate or a Special Judge? In this connection, it is relevant to refer Section 200 of BNSS and corresponding Section 190 of Cr.P.C, which read as under:

"Section 200 of BNSS : Punishment for non-treatment of victim.

Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of section 449 of the Bharatiya Nagarik Suraksha Sanhita, 2023, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

BNSS Classification

- *Imprisonment for 1 year, or fine, or both.*
- *Non-cognizable*
- *Bailable"*
- *Triable by Magistrate of the first class."*

"Section 190 of Cr.P.C:

"(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the

second class specially empowered in this behalf under Sub-Section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

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

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

Similarly Section 223 of BNSS and corresponding Section 200 of Cr.P.C also are relevant. The same are extracted as under:

"Section 223 of BNSS:

Examination of complainant.

(1) A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in

writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless—

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received."

Section 200 of Cr.P.C

"A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate;

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses,

1. if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

2. if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192; Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

20. Section 200 of BNSS provides for the procedure for Magistrate taking cognizance of an offence on complaint. The Magistrate is not bound to take cognizance of an offence merely because a complaint has been filed before him when in fact the complaint does not disclose a cause of action. The language in Section 200 Cr.P.C "a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any..." clearly suggests that taking cognizance of an offence is the first step, then in continuation of the same, the Court shall examine the complainant upon oath to decide upon whether summons to be issued under Section 204 of Cr.P.C or to dismiss the complaint under Section 203 of Cr.P.C. Similarly the language in

Section 223 of BNSS 'a Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any' also would suggest that taking cognizance of the offences by applying the mind of the Magistrate or Special Judge is the first step to proceed with the examination of the complainant and witnesses. On completion of the examination of the witnesses, the Magistrate or the Special Judge can either dismiss the complaint under Section 226 of BNSS or to issue process under Section 227 of BNSS. In this connection, proviso to Section 223 of BNSS also is relevant. It has been provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. In ***Suby Antony v. R1 & Ors.*** *(supra)*, this Court held that the purpose behind the proviso is to provide an opportunity to the Magistrate to assimilate the correct facts, for deciding whether or not to take cognizance of the offence. It was further held that a plain reading of Section 223(1) would indicate that the accused need be issued with notice only at the stage of taking cognizance. It was held further that taking

cognizance under Section 223 of BNSS would come after the recording of the sworn statement, at that juncture, a notice was required to be sent to the accused, since the proviso would mandate grant of an opportunity of hearing.

21. It is not in dispute that mere presentation of the complaint and receipt of the same in the court do not mean that the Magistrate has taken cognizance of the offence. In ***Narsingh Das Tapadia v. Goverdhan Das Partani and Anr.*** MANU/SC/0555/2000 : AIR 2000 SC 2946, it was held that the mere presentation of a complaint could not be held to mean that the Magistrate had taken the cognizance. In ***Subramanian Swamy v. Manmohan Singh and Anr.*** MANU/SC/0067/2012 : (2012) 3 SCC 64, the Apex Court explained the meaning of the word 'cognizance' holding that "... *in legal parlance cognizance is taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially*".

22. Section 200 of Cr.P.C or Section 223 of BNSS

contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. Then normally three courses are available to the Magistrate. The Magistrate can either issue summons to the accused or order an inquiry under Section 202 of Cr.P.C or under Section 225 of BNSS or dismiss the complaint under Section 203 of Cr.P.C or under Section 226 of BNSS. Upon consideration of the statement of complainant and the material adduced at that stage if the Magistrate is satisfied that there are sufficient grounds to proceed, he can proceed to issue process under Section 204 of Cr.P.C or under Section 226 of BNSS. Section 202 of Cr.P.C or Section 225 of BNSS contemplates 'postponement of issue of process'. It provides that the Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance may, if he thinks fit, postpones the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or have an inquiry made by any Magistrate subordinate to him, or an investigation made by a police officer, or by

some other person for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds no sufficient ground for proceeding, he can dismiss the complaint by recording briefly the reasons for doing so, as contemplated under Section 203 Cr.P.C or under Section 226 of BNSS. A Magistrate takes cognizance of an offence when he decides to proceed against the person accused of having committed that offence and not at the time when the Magistrate is just informed either by complainant by filing the complaint or by the police report about the commission of an offence.

23. In ***S.K.Sinha, Chief Enforcement Officer v. Videocon International Ltd And Ors.*** MANU/SC/7011/2008 : (2008) 2 SCC 492, considering the scope of expression "cognizance" it was held that the expression "cognizance" has not been defined in the Code. But the word `cognizance' is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a

Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

24. A three Judge Bench of the Apex Court in the case of ***R.R. Chari v. State of Uttar Pradesh*** MANU/SC/0025/1951 : 1951 SCR 312, while considering what the phrase 'taking cognizance' mean, approved the decision of Calcutta High Court in ***Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar Banerjee*** MANU/WB/0167/1950 : AIR 1950 Cal. 437, wherein it was observed that:

> *...What is "taking cognizance" has not been defined in the Code of Criminal Procedure and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence Under Section 190(1) (a), Code of Criminal Procedure, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter;-proceeding Under*

Section 200, and thereafter sending it for enquiry and report Under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation Under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence....

The same view was reiterated by the Apex Court in ***Jamuna Singh and Ors. v. Bhadai Sah*** [MANU/SC/0092/1963 : (1964) 5 SCR 37] and ***Nirmaljit Singh Hoon v. State of West Bengal and Anr.*** [MANU/SC/0196/1972 : (1973) 3 SCC 753].

25. Elaborating upon the words expression "taking cognizance" of an offence by a Magistrate within the contemplation of Section 190 of Cr.P.C, in ***Devarapally Lakshminarayana Reddy and Ors. v. V. Narayana Reddy and Ors.*** MANU/SC/0108/1976 : AIR 1976 SC 1672, the Apex Court held as under:

...But from the scheme of the Code, the content

and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in Clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding Under Section 200 and the succeeding sections in Chapter XV to the Code of 1973, he is said to have taken cognizance of the offence within the meaning to Section 190(1)(a). It, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police Under Section 156(3), he cannot be said to have taken cognizance of any offence.

26. In ***CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd. And Anr.*** MANU/SC/0524/2005 : (2005) 7 SCC 467 wherein the Apex Court held as under:

"10. In the instant case, the Appellant had filed a detailed complaint before the Magistrate. The record shows that the Magistrate took cognizance and fixed the matter for recording of the statement of the complainant on 1-6-2000. Even if we assume, though that is not the case, that the words "cognizance taken" were not to be found in the order recorded by him on that date, in our view that would make no difference. Cognizance is taken of the offence and not of the offender and, therefore, once the court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. One should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the court decides to proceed against the offenders against whom a prima facie case is made out. It is possible that a complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance and examining the complainant on oath, the court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint... '

27. In ***Kallu Nat v. State of U.P and Ors.***'s case (*supra*), the Apex Court referred the earlier decision reported in [MANU/SC/0025/1951 : 1951 INSC 20 : AIR 1951 SC 207],

R.R.Chari v. State of U.P as well as the decision reported in [MANU/SC/0163/1977 : 1977 INSC 192 : (1977) 4 SCC 459], ***Tula Ram v. Kishore Singh*** and other decisions, where it was held that when the Magistrate applies his mind not for the purpose of proceeding under Section 200 and subsequent Sections of Chapter XV of the Cr.P.C, he must be held to have taken cognizance of the offence as above mentioned, in ***R.R.Chari v. State of U.P***'s case (*supra*). But for the action taken in some other kind, for ordering investigation or issuing a search warrant, he cannot be said to have taken cognizance of the offence. In ***Kallu Nat v. State of U.P and Ors.***'s case (*supra*), the Apex Court considered other decisions in paragraph 38 and 39 as under:

> *"38. This Court in **Rameshbhai Pandurao Hedau v. State of Gujarat**, reported in MANU/SC/0183/2010 : 2010:INSC:157 : (2010) 4 SCC 185, held that a direction for investigation Under Section 156(3) is to ascertain whether the Magistrate shall take cognizance. Whereas, an investigation Under Section 202 is for ascertaining whether there are sufficient grounds for the Magistrate to proceed further. The relevant observations read thus;*
>
> *22. It is now well settled that in ordering an investigation Under Section 156(3) of the Code, the*

Magistrate is not empowered to take cognizance of the offence and such cognizance is taken only on the basis of the complaint of the facts received by him which includes a police report of such facts or information received from any person, other than a police officer; Under Section 190 of the Code. Section 200 which falls in Chapter XV, indicates the manner in which the cognizance has to be taken and that the Magistrate may also inquire into the case himself or direct an investigation to be made by a police officer before issuing process.

23. Reference was also made to the decision of this Court in Mohd. Yousuf v. Afaq Jahan [MANU/SC/8888/2006 : 2006:INSC:1 : (2006) 1 SCC 627 : (2006) 1 SCC (Cri) 460. where it has been held that when a Magistrate orders investigation under Chapter XII of the Code, he does so before he takes cognizance of the offence. Once he takes cognizance of the offence, he has to follow the procedure envisaged in Chapter XV of the Code. The inquiry contemplated Under Section 202(1) or investigation by a police officer or by any other person is only to help the Magistrate to decide whether or not there is sufficient ground for him to proceed further on account of the fact that cognizance had already been taken by him of the offence disclosed in the complaint but issuance of process had been postponed.

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25. The power to direct an investigation to the police authorities is available to the Magistrate both Under Section 156(3) Code of Criminal Procedure and Under Section 202 Code of Criminal Procedure The only difference is the stage at which the said powers may be invoked. As indicated hereinbefore, the power Under Section 156(3) Code of Criminal Procedure to direct an investigation by the police authorities is at the pre-cognizance stage while the power to direct a similar investigation Under Section 202 is at the post- cognizance stage.

39. In Ramdev Food Products Pvt. Ltd. v. State of Gujarat, reported in MANU/SC/0286/2015 : 2015:INSC:218 : (2015) 6 SCC 439, three-Judge Bench of this Court underscored the difference in meaning of the term "investigation" Under Section 156(3) as compared to Section 202 of the Code. The relevant observations read thus:

21. On the other hand, power Under Section 202 is of different nature. Report sought under the said provision has limited purpose of deciding "whether or not there is sufficient ground for proceeding". If this be the object, the procedure Under Section 157 or Section 173 is not intended to be followed. Section 157 requires sending of report by the police that the police officer suspected commission of offence from information received by the police and thereafter the police is required to proceed to the spot, investigate the facts and take

measures for discovery and arrest. Thereafter, the police has to record statements and report on which the Magistrate may proceed Under Section 190. This procedure is applicable when the police receives information of a cognizable offence, registers a case and forms the requisite opinion and not every case registered by the police.

xxx

22.1. The direction Under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

xxx

37. In Nagawwa v. Veeranna Shivalingappa Konjalgi [MANU/SC/0173/1976 : 1976:INSC:125 : (1976) 3 SCC 736 : 1976 SCC (Cri) 507], referring to earlier judgments on the scope of Section 202, it was observed : (SCC p. 740, para 3) 3 . "In Chandra Deo Singh v. Prokash Chandra Bose [MANU/SC/0053/1963 : 1963:INSC:9 : AIR 1963 SC 1430 : (1963) 2 Cri

LJ 397 : (1964) 1 SCR 639] this Court had after fully considering the matter observed as follows : (AIR p. 1433, para 8)

'8.... The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry Under Section 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant.' Indicating the scope, ambit of Section 202 of the Code of Criminal Procedure this Court in Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar [MANU/SC/0059/1960 : 1960:INSC:108 : AIR 1960 SC 1113 : 1960 Cri LJ 1499] observed as follows :

(AIR p. 1116, para 9).

"9. .... Section 202 says that the Magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the Section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The Section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial.'

Same view has been taken in Mohinder Singh v. Gulwant Singh [MANU/SC/0363/1992 : 1991:INSC:342 : (1992) 2 SCC 213 : 1992 SCC (Cri)

361], Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel [MANU/SC/0819/2012 : 2012:INSC:439 : (2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218], Raghu Raj Singh Rousha v. Shivam Sundaram Promoters (P) Ltd. [MANU/SC/8476/2008 : 2008:INSC:1459 : (2009) 2 SCC 363 : (2009) 1. SCC (Cri) 801] and Chandra Deo Singh v. Prokash Chandra Bose [MANU/SC/0053/1963 : 1963:INSC:9 : AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 : (1964) 1 SCR 639.."

28. Thus the law emerges from a vast majority of decisions is that when a Magistrate applies his mind to the contents of the complaint for the purpose of proceeding in a particular way, as indicated in Section 200 of Cr.P.C or under Section 223 of BNSS and subsequent provisions, then cognizance is said to be taken. When the Magistrate applies his mind not for the purpose of proceeding in the subsequent but for taking action of some other kind, for instance ordering investigation or issuing a search warrant for the purpose of the investiation, it could not be said to have taken cognizance of the offence. It is true that the leanred counsel M.P.Shameen Ahamed would contend that when the Magistrate decided to examine the complaint under Section 223 of BNSS and even started examination of the complainant and witnesses, it could not be said that the

cognizance has been taken and the stage of taking cognizance is subsequent to and before ordering issuance of summons.

29. The decisions cited by Advocate M.P.Shameen Ahamed referred herein above lay down that the object of examination of the complainant is to find out whether the complaint is justifiable or is vexatious. Merely because the complainant was examined, that does not mean that the Magistrate has taken cognizance of the offence. "Cognizance" therefore has a reference to the application of judicial mind by the Magistrate in connection with the commission of an offence and not merely to a Magistrate learning that some offences had been committed. Only upon examination of the complainant, the Magistrate will proceed to apply the judicial mind whether to take cognizance of the offence or not. Under Section 200 of Cr.P.C, when the complainant is examined, the Magistrate cannot be said to have *ipso facto* taken the cognizance, when the Magistrate was merely gathering the materials on the basis of which he will decide whether a *prima facie* case is made out for taking cognizance of the offence or not.

30. Thus the view as discernible from the verdicts referred to by Advocate M.P.Shameen Ahamed could be gathered from the decision in ***Kallu Nat v. State of U.P and Ors.***'s case (*supra*) and other similar decisions placed by him.

31. However, as pointed out earlier and as argued by the learned Senior Counsel Sri B.Raman Pilla, the vast majority of the decisions hold the other view. Generally, in the majority decisions, `Cognizance of an offence' means taking notice of the accusations and applying the judicial mind to the contents of the complaint and the material filed therewith. It is neither practicable nor desirable to define as to what is meant by taking cognizance; whether the Magistrate has taken cognizance of the offence or not, will depend upon the facts and circumstances of a particular case. In ***CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd. And Anr.***'s case (*supra*), the Apex Court held that when a private complaint filed before a Magistrate was posted on 01.06.2000, the Magistrate took cognizance and fixed the matter for recording the statement. Further it was held that cognizance would be taken not for the offender but

for the offence and once the court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage and proceeds further in the matter, it must be held to have taken cognizance of the offence. It was also held that one should not confuse the terms `taking cognizance' with `issuance of process'. It was held further that cognizance is taken at the initial stage then the Magistrat peruses the complaint with a view to ascertain whether the offence is disclosed. Similarly issuance is a process at a later stage, when, after considering the materials placed before the court, the court decides to proceed against the offenders against whom a *prima facie* case is made out.

32. In Ground A(f) of Crl.M.C.No.7741/2025, it has been contended that "the reliance placed by the court below on Subhy Antony v. Susha is totally misplaced. Moreover the dictum laid in the above judgment is perincuriam and contrary to the settled position of law based on various judgments. Reverting back, "taking cognizance of an offence" means that the Magistrate or the Special

Judge must have judicially applied the mind to the contents of the complaint and indicates that Magistrate takes judicial notice of an offence. If it is said that when the Magistrate decided to proceed further under Section 200 Cr.P.C or under Section 223 of BNSS and subsequent sections after judicially applying his mind to the contents of the complaint, then the Magistrate should have taken judicial notice of an offence, that is the Magistrate took cognizance of the offence. Be it so, a notice as per the proviso to Section 223 of the BNSS shall be issued, providing an opportunity to the accused, before the Magistrate decides to proceed with the complaint and not after completion of the examination of the complaint and witnesses. Thus providing opportunity of hearing to the accused is mandatory in terms of proviso to Section 223 of BNSS in such a way.

33. In the instant case, going through the lengthy order passed by the learned Special Judge, running into 114 pages, it could be gathered that the Special Judge elaborately addressed Annexures 6 and 7 reports, with a view to either accept or reject the same and finally rejected the same. While doing the said exercise, the learned

Special Judge, in relief No.5, it has been categorically observed that the complaint allegations, the documents produced, the materials collected by the enquiry officer and produced before the Court, would show a *prima facie* case and, therefore, there are sufficient materials to proceed further under Section 223 of BNSS and thus by the order, the learned Special Judge took cognizance of the offences, for which no sanction under Section 19(1) has so far been issued.

34. If at all the view taken in the judgments referred by Advocate M.P.Shameen Ahamed is given emphasis, it is necessary to consider the argument of the learned Senior Counsel for M.R.Ajith Kumar also. Thus the arguments at the instance of the learned Senior Counsel appearing for Sri M.R.Ajith Kumar is that the Apex Court in ***Anil Kumar v. M.K.Ayyappa*** (*supra*) considered the finding of the High Court by quashing the order passed by the Special Judge after holding that the Special Judge could not have taken notice of a private complaint against a public servant unless the same was accompanied by a sanction order under Section 19(1) of PC Act, 1988, irrespective of whether the court was acting at a pre cognizance

stage or at post cognizance stage. While addressing correctness of the said order, the Apex Court held in paragraph Nos.11 and 15 that *where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 of Cr.P.C, the Magistrate is required to apply his mind, and in such a case the Special Judge/Magistrate cannot refer the matter under Section 156(3) Cr.P.C for investigation against a public servant without a valid sanction under Section 19(1) of the PC Act, 1988.* Further it was held that *the word `cognizance' has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge under the Prevention of Corruption Act, 1988 refers a complaint for investigation under Section 156(3) Cr.P.C, obviously he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage.* It was held further that *when a Special Judge takes cognizance of the offence on a complaint presented under Section 200 Cr.P.C, the next step to be taken is to follow under Section 202 Cr.P.C.* Therefore, the contention of the learned Senior Counsel for M.R.Ajith Kumar is that

decision to proceed under Section 200 Cr.P.C or under Section 223 of BNSS is akin to taking cognizance. Apart from that the learned Senior Counsel raised a contention that either to forward a complaint filed before a Special Judge under the PC Act for investigation under Section 156(3) Cr.P.C or under Section 175(3) BNSS sanction under Section 19(1) is mandatory. He also argued that for the same reasons, when the Special Judge decided to proceed further on the complaint even if it is held the stage as "pre-cognizance stage" for which also sanction under Section 19(1) is mandatory and, then also Annexure 8 order is illegal. In this connection, it is not in dispute that the decision in ***Anil Kumar v. Ayyappa*** (supra) was considered in *[(2018) 5 SCC 557]*, ***Manju Surana v. Sunil Arora & Ors.*** and the question was referred to a larger Bench for an authoritative verdict on the point. That apart, as per the decision in ***B.S.Yeddiyurappa v. A Alam Pasha & Ors.***'s case (*supra*) also the Apex Court raised 8 questions with reference to Sections 17A and 19 of the P.C Act, 2018 as well as under Sections 156(3) and 200 to 203 of Cr.P.C and referred the same also to be considered by a larger Bench in view of

the decision in ***Manju Surana*** *(supra)*. In fact, the questions referred to the larger Bench in ***B.S.Yeddiyurappa v. A Alam Pasha & Ors.***'s case (*supra*) are also questions involved in this case, awaiting an authoritative pronouncement on those issues.

35. The PC (Amendment) Act, 2018, incorporated additional provisions to address contingencies, including situations where a person lodges a complaint in a competent court regarding an alleged offence for which a public servant is to be prosecuted. It has been provided that when a person has filed a complaint in a competent court alleging commissiion of offences for which the public servant is sought to be prosecuted, the procedure provided under the first proviso to Section 19(1) clause (i) and (ii) to be followed. It has been provided that such a person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted and the court has not dismissed the complaint under Section 203 of Cr.PC and the Court has directed the complainant to obtain the sanction under Section 19(1) for prosecution against the public servant for further proceeding. Second

proviso to Section 19 of PC Act, 2018 states that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant.

36. Thus in the instant case, when the Special Judge, on receipt of the complaint, decided not to forward the complaint for investigation by the police under Section 175(3) of BNSS, following the ratio in ***Anil Kumar v. M.K.Aiyappa***'s case (*supra*) (the correctness of the same is now pending before a larger Bench of the Apex Court), he ought to have directed the complainant to produce sanction in terms of Section 19(1) r/w the first proviso clauses (i) and (ii) to proceed further. If so, the impugned order, whereby the learned Special Judge decided to proceed under Section 223 of the BNSS on finding a *prima facie* case on applying his mind without sanction, amounts to an order taking cognizance, and therefore, the same is *non-est* in the eye of law and is liable to be set aside.

37. Coming to Annexures 6 and 7 reports, in fact, the Special Court has no power to address on its legality and the complainant or aggrieved persons could very well take up the matter before Constitutional Court to consider the same, to set aside the same and in such a proceedings the Constitutional Court can either set aside or reject or accept the same. Thus the constitutional court has the power to address on its sustainability. Since the learned Special Judge, while considering Annexure 5, was not inclined to accept the inquiry reports for the reasons stated therein and was not empowered to do so, the finding of the Special Court that the inquiry reports were not acceptable and could not be considered is also *non-est* and as such the same would not sustain in the eye of law. Therefore, the said finding also is liable to be set aside.

38. As regards to the contention raised by the learned Senior Counsel Sri B.Raman Pilla, appearing for Sri M.R.Ajithkumar, to quash the complaint, viz., Annexure 5, in consonance with the findings in Annexures 6 and 7, the same also cannot be considered by this Court without a specific challenge against the reports,

particularly, when the learned counsel for Sri P.V.Anwar categorically made a submission that Sri P.V.Anwar is having grievance on Annexures 6 and 7 reports, for which he would seek appropriate legal remedies before this Court. On perusal of the allegations in Annexure 5 complaint along with the allegations raised by Sri P.V.Anwar, it is evident that the investigation or inquiry sought is regarding the amassment of enormous assets by Sri M.R.Ajith Kumar during 1994-2004 (reckoned as the check period). But in the complaint lodged by Sri P.V.Anwar, in fact, a check period was not stated as stated in Annexure 5. Therefore, it is too premature for this Court to quash Annexure 5 complaint. Thus the said prayer is liable to fail.

39. For the reasons stated as aforesaid, all the observations in paragraph Nos.106 and 107 of the impugned order as against the Chief Minister, who finally accepted the reports as part of official duty, also are liable to be expunged.

40. In the result,

I) (i) Crl.M.C.No.7741/2025 is allowed in part. The prayer to quash Annexure 5 is dismissed and Annexure 8 order is set

aside. Consequently, Annexure 5 is relegated to the stage of pre-cognizance with liberty to the learned Special Judge to proceed further on the same, after getting sanction under Section 19(1) of the PC Act, 2018 at the instance of the complainant. In this regard, the complainant is free to apply before the competent authority and to produce the same before the Special Court.

(ii) In so far as Annexures 6 and 7 reports are concerned, the finding of the Special Court that the same are not acceptable is set aside, subject to the right of the aggrieved persons, to challenge its legality, as per law.

II) Crl.M.C.No.8392/2025 is allowed and all the observations made against the Chief Minister in Annexure 8 order including the observations in paragraph Nos.77 to 81, 91 to 97, 106 and 107 of Annexure 8 order are expunged.

Registry is directed to forward a copy of this order to the Enquiry Commissioner and Special Judge, Thiruvananthapuram, for information and compliance.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/