

White-Collar Crime & Corporate Investigations Newsletter - December 2024

NEWS UPDATES

BOMBAY HIGH COURT NOTIFIES VIDEO CONFERENCING RULES W.E.F. DECEMBER 29, 2024

The **Bombay High Court** vide a notification dated December 19, 2024, notified the implementation of the **High Court of Bombay Rules for Video Conferencing for Courts 2022 (Rules)** with effect from December 29, 2024. The Rules shall apply to all the civil and criminal proceedings pending before the Courts and tribunals in the State of Maharashtra, Goa and Union Territories of Daman and Diu and Dadra and Nagar Haveli. The Rules lay down comprehensive guidelines and procedure for conducting the proceedings through video conferencing for the following purposes:

- a. appearance of party or witness, evidence and submissions;
- b. service of summons;

- c. examination of persons;
- d. exhibiting or showing documents to witness or accused at a remote point;
- e. judicial remand, framing of charge, examination of accused, and recording statements under S.164 of the CrPC; and
- f. seamless video conferencing.

The Rules mandate compliance of the protocols enumerated in Schedule I to the Rules by all Advocates, Required Persons, parties appearing in person and/or other concerned persons. Further, a party to the proceeding or witness, seeking a proceeding by video conferencing is required to move an application prescribed in Schedule II before the appropriate Court.

[Notification dated December 19, 2024 along with the Rules](#)

PREVENTION OF MONEY LAUNDERING ACT

PROPERTIES ACQUIRED PRIOR TO THE DATE OF THE ALLEGED PREDICATE OFFENCE CANNOT BE ATTACHED UNDER THE PMLA

The Kerala High Court quashed the provisional attachment order attaching the Petitioners' properties acquired prior to the date of the predicate/scheduled offence. The Court interpreted S.2(1)(u) of the PMLA which defines proceeds of crime and held that any property unconnected with the proceeds of crime can only be attached when the property derived out of the criminal activity was taken out of India or is held outside the country. The Court relied upon several judgments including the Supreme Court decision in Pavana Dibbur vs. Directorate of Enforcement [2023 SCC Online SC 1586], which held that property acquired

prior to commission of crime cannot be attached. In the present case, no case was made out that any proceeds of crime were taken out of the country. Therefore, the Court held that the attachment was null and void and wholly without jurisdiction.

[Davy Varghese and Anr. vs. Deputy Director, Directorate of Enforcement](#)

SUPREME COURT DIRECTS ED TO NOT ACCESS/COPY OR EXTRACT DATA FROM ELECTRONIC DEVICES SEIZED

The **Supreme Court** in this case granted *ex-parte* ad-interim reliefs in favour of the Petitioners directing the Directorate of Enforcement (**ED**) to not access and copy

data from the electronic devices seized and also stayed the summons under S.50, PMLA issued to the individuals to the extent they require their presence for extraction of data stored in the electronic devices.

[Future Gaming and Hotels Services Pvt Ltd. and Anr. vs. Directorate of Enforcement and Ors.](#)

BHARATIYA NAGARIK SURAKSHA SANHITA

POLICE CUSTODY SHOULD BE GIVEN WITHIN FIRST 40 DAYS FOR OFFENCES PUNISHABLE UP TO 10 YEARS IMPRISONMENT

The **Karnataka High Court** held that in respect of all offences under the Sanhita, the police custody should be given for a maximum period of 15 days. Further, the Court has clarified that it has to be given within first 40 days of the mandated detention period of 60 days in respect of offences punishable with the maximum

imprisonment of up to ten years. In the present case, the Court upheld the decision of the trial Court denying the police custody as the 40 days period was over and the offences alleged against the Appellant were punishable with up to ten years of imprisonment. The Supreme Court refused to interfere with the High Court's decision.

[State of Karnataka vs. Kalandar Shafi and Ors.](#)

CODE OF CRIMINAL PROCEDURE

SANCTION NOT REQUIRED FOR PROSECUTING POLICE OFFICERS FOR LODGING BOGUS CASE OR FABRICATING EVIDENCE

The **Supreme Court** set aside the High Court's order quashing the case against police officials accused of fabricating documents to shield an accused in a murder case. It was held that when a police official is said to have lodged a false case, he/she cannot claim that sanction for prosecution under S.197 of the CrPC (which states *inter alia* that no Court shall take cognizance of such offence against a public servant without previous sanction from the appropriate sanctioning authority) was required since it cannot be a part of his/her official duty. The Court further held that the defence must be given an opportunity to rebut the same by leading evidence and the Courts must avoid premature staying or quashing of criminal trials at the preliminary stage of a case as the same could cause damage to the evidence.

[Om Prakash Yadav vs. Niranjan Kumar Upadhyay and Ors.](#)

COURT CANNOT DIRECT REINVESTIGATION AGAINST AN ACQUITTED ACCUSED FOR THE SAME OFFENCE ON SAME FACTS

The **Supreme Court** while dealing with a case wherein the High Court directed retrial and reinvestigation against an accused (who was acquitted for the same offence on the same set of facts), held that a Court cannot direct reinvestigation under S.386(b) of the CrPC to a different investigating agency, which gives the Appellate Court power to direct retrial in an appeal from conviction. Therefore, the order of transfer of investigation to CBI was without jurisdiction. The Court further held that the High Court's order was in violation of principle of double jeopardy recognised under Article 20(2) of the Constitution of India and S.300 of the CrPC, which provides that a person once convicted or acquitted cannot be tried for the same offence.

Accordingly, the Court quashed the proceedings against the accused and acquitted him of all charges.

[P. Manikandan vs. Central Bureau of Investigation and Ors.](#)

PROVISO TO S.311A, CRPC IS DIRECTORY AND NOT MANDATORY

In a reference under S.395(2) of the CrPC, the **Delhi High Court** held that proviso to S.311A of the CrPC is not mandatory and is directory in nature. The Court, while upholding the constitutional validity of the proviso, held that the accused/person need not be arrested when he/she voluntarily appears before the Magistrate, pursuant to the application filed by the Investigation Officer, for giving specimen signature or handwriting. S.311A, akin to S.5 of the Identification of Prisoners Act, 1920 empowers the Magistrate to issue directions to any person including an accused to give specimen and handwriting for the purpose of any investigation or proceeding. Notably, this provision has been incorporated in the BNSS (S.349) with an addition of another proviso which clarifies that the Magistrate, after recording reasons in writing direct any person to give such specimen or sample without him/her being arrested.

[Court on its own motion vs. State](#)

WHEN FIR LACKS CRUCIAL FACTS, SUBSEQUENT INTRODUCTION OF SUCH FACTS IN S.161 STATEMENTS INDICATES AN AFTERTHOUGHT

In this case, an FIR was registered against the Appellant under S.353 of the IPC alleging assault and use of criminal force on police officials and subsequently, S.186, IPC was added by the police. The **Supreme Court** while quashing the criminal proceedings *inter alia* held that the FIR lacked the vital and crucial facts which should have been mentioned by the Complainant in his complaint to indicate the commission of offensive acts under S.353 and the subsequent introduction of these facts in the statements under S.161 of the CrPC indicate an afterthought on the part of the complainant. With respect to S.186 of the IPC, the Court held that neither the permission of Magistrate was taken under S.155(2), CrPC by the police to initiate the investigation (as S.186 is a non-cognizable offence), nor there was a complaint filed by a public servant before the 'Judicial Magistrate' in conformance with S.195(1), CrPC.

[B.N. John vs. State of U.P. and Anr.](#)

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT

COMPLIANCE WITH S.50, NDPS ACT DOES NOT REQUIRE THE USE OF THE WORD 'NEAREST'

The **Supreme Court** held that the use of the words 'any Gazetted Officer' instead of 'nearest Gazetted Officer' in the notice under S.50 of the NDPS Act does not amount to non-compliance with the provision. The Court observed that the intent behind S.50 is to ensure that the suspect is made aware of their right to be

searched before a Gazetted Officer or Magistrate, thereby safeguarding the fairness of the procedure. The term 'nearest' is meant to ensure convenience and avoid unnecessary delay in conducting the search. Accordingly, while setting aside the order of the High Court, the Court held that S.50 was complied with as the Respondent was adequately informed of his rights.

[State of NCT of Delhi vs. Mohd. Jabir](#)

MISCELLANEOUS

COURT CANNOT CONSIDER DOCUMENTS OUTSIDE THE CHARGESHEET DURING FRAMING OF CHARGES

The **Supreme Court** reiterated the well-settled principle that while considering a prayer for discharge, the Court cannot take into account any document that is not a part of the chargesheet. In the present case, an FIR was registered by the Appellant's wife under S. 498A, S.406 read with S.34 of the IPC. The High Court had directed the trial Court to consider certain documents, including a decree of nullity while hearing the arguments on charge, which were not part of the chargesheet. The Supreme Court held that such directions by the High Court were completely illegal and remanded back the matter to the High Court.

[Ranjish Kumar Biswakarma vs. State of NCT of Delhi and Anr.](#)

CHARGESHEET CANNOT BE FILED WHEN THERE IS A COURT'S ORDER RESTRAINING COERCIVE ACTION

The **Supreme Court** held that a chargesheet cannot be filed after a court has passed an interim order restraining any coercive action against the accused. In the present case, the police relied on a letter dated April 15, 2011 issued by the Additional Director General of Police, Jharkhand which stated that filing a charge sheet was not prohibited when a 'no coercive action' order was in place. The Court found the contents of the letter to be illegal and directed the Additional DGP to immediately modify the same.

[Satish Kumar Ravi vs. State of Jharkhand](#)

COURT CAN QUASH SHOW CAUSE NOTICE UNDER CUSTOMS ACT OR CGST ACT ON GROUND OF INORDINATE DELAY

The **Delhi High Court** allowed a batch of writ petitions filed for quashing of show cause notices under the Customs Act, 1962, CGST Act, 2017 and Finance Act, 1994 due to inordinate delays in adjudication, with

some cases dating back to 2006. The Court noted that the authorities under these statutes are obliged to conclude adjudication with due expedition, and it is upon the authority to establish that it was genuinely hindered and impeded in resolving the dispute with reasonable speed and dispatch.

[VOS Technologies India Pvt. Ltd. vs. Principal Additional Director General and Anr.](#)

QUASHING PETITION ALLOWS BROADER GROUNDS OF CHALLENGE COMPARED TO A DISCHARGE APPLICATION

The **Supreme Court** set aside the High Court's order dismissing a petition filed for quashing of an FIR, stating it to be infructuous due to filing of the chargesheet. The Court was critical of such practise and rejected the State's argument that the accused has a remedy of waiting for charges to be framed, which can be challenged by way of a revision application. The Court clarified that though a discharge application could be filed, the scope of the same is completely different from that of a quashing petition and the ground of abuse of process of law is not available in a discharge application and it is permissible to rely on documents outside the chargesheet in a quashing petition, unlike a discharge application.

[Mukesh and Ors. vs. State of Uttar Pradesh and Ors.](#)

NIA HAS POWERS TO INVESTIGATE NON-SCHEDULED OFFENCE(S)

The **Supreme Court** held that to invoke S.8 of NIA Act (powers to investigate any other offence which the accused is alleged to have committed if such offence is connected with the scheduled offence), the offence alleged to have been committed must have a connection with the scheduled offence and the terms "any other offence" is wide and expansive. In this case, the Court held that NIA while investigating the offences

under S.17 and S.18 of the Unlawful Activities (Prevention) Act, 1967 (“UAPA”) can also investigate any other offence if it has a connection with the UAPA offences. The term “accused” under S.8 cannot be interpreted narrowly and would also include such accused whose name would emerge during investigation of the scheduled offence. Therefore, although the petitioner was accused for the offences under the NDPS act (which is not a scheduled offence), the Court held that the facts of the case established a connection, nexus and link between the offences under NDPS act and UAPA and therefore, could be investigated by the NIA. Accordingly, the Court held that NIA was justified in seeking cancellation of bail of the petitioner.

[Ankush Vipan Kapoor vs. National Investigation Agency](#)

CRIMINAL PROCEEDINGS CANNOT BE QUASHED IN CASES OF CORRUPTION AND LOSS TO PUBLIC EXCHEQUER, REGARDLESS OF SETTLEMENT BETWEEN PARTIES

The **Supreme Court** reaffirmed that the criminal proceedings cannot be quashed in cases involving corruption and loss to public exchequer, regardless of the consent terms and settlement between parties. In this case, the Court observed that since substantial injury was caused to the public exchequer and allegations under Prevention of Corruption, Act were involved, quashing of offences would have a grave impact on the society.

[Anil Bhavarlal Jain and Anr. vs. The State of Maharashtra and Ors.](#)

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White-Collar Crime and Corporate Investigations Practice

We have a skilled team specialized in criminal law, corporate/ transactional law, Intellectual Property and technology law, with considerable experience in criminal defence and regulatory enforcement.

Our knowledge of the enforcement landscape and understanding of the approach employed by regulators and investigating agencies enables us to anticipate the litigation trajectory and take steps to avoid/mitigate liability where possible.

The WCC team also works closely with the larger litigation practice to combat the substantial civil litigation risks that often accompany criminal and regulatory issues.

Competencies

Our subject matter competencies include the following:

- Fraud and Business Crime
- Money Laundering and FEMA
- Anti-Bribery, Anti-Corruption, and Investigations
- Securities Fraud
- Data Protection and Cyber Security
- Licensing Control
- Sanctions

Agencies/Authorities

We have represented clients before the following agencies:

- Directorate of Enforcement (ED)
- Central Bureau of Investigations (CBI)
- Serious Fraud Investigation Office (SFIO)
- Crime Branch/ Economic Offence Wing (EOW)
- Police Cyber Units
- Adjudicating Authorities and Appellate Tribunals under PMLA
- State Adjudicating Authorities (appointed under the Information Technology Act, 2000)
- Securities and Exchange Board of India (SEBI)
- Reserve Bank of India (RBI)
- Directorate of Revenue Intelligence (DRI)

Key Contacts:



Mr. Vikrant Singh Negi | Partner
vikrantsingh.negi@dsklegal.com
+91 99870 25971



Ms. Ekta Tyagi | Partner
ekta.tyagi@dsklegal.com
+91 98200 71781

Contributors:

Pratik Thakkar, Anjali Shah, Priyamvada Singhania, Sneha Barange, and Sourabh Arora.