

## White-Collar Crime & Corporate Investigations Monthly Newsletter

### PREVENTION OF MONEY LAUNDERING ACT

#### NCLT/NCLAT CANNOT REVIEW ED'S ACTIONS UNDER PMLA

The **Supreme Court** has held that, since the Prevention of Money Laundering Act, 2002 (**PMLA**) falls within the domain of public law, the National Company Law Appellate Tribunal (**NCLAT**) or the National Company Law Tribunal (**NCLT**) do not have the power or jurisdiction to review the decision of a statutory authority under the PMLA. In this case, the Directorate of Enforcement (**ED**) had provisionally attached the assets of a Corporate Debtor under Section 5 of the PMLA after NCLT had approved a resolution plan. Upon a challenge filed by the successful Resolution Applicant, the NCLAT stayed the operation of the Provisional Attachment Order issued by the ED.

However, the Supreme Court quashed the stay on various grounds including that, PMLA being a public law, NCLT or NCLAT are not vested with the power of judicial review over decisions taken by a statutory authority under the PMLA in matters falling within the realm of public law. The court held that such decisions cannot be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in Section 60(5)(C) IBC and therefore, the NCLAT also, being an Appellate Authority under Section 61 over the orders passed by the NCLT, could not exercise any power or jurisdiction beyond Section 61 of IBC.

[Kalyani Tansco vs Bhushan Power and Steel & Ors..pdf](#)

#### SC HOLDS ACCUSED ENTITLED TO COPIES OF SEIZED DOCUMENTS AND RECORDS UNDER PMLA, EVEN IF NOT RELIED UPON

In a landmark judgment, the **Supreme Court** has laid down the law regarding the right of an accused under the PMLA to documents seized and relied upon by the ED as well as documents not relied upon by the ED. Some of the crucial findings are summarized below:

- (i) An accused is entitled to copies of title documents of a property which are seized by ED;
- (ii) Upon cognizance of the prosecution complaint filed under Section 44(1)(b) of the PMLA and issuance of process, the accused must be provided with a copy

of the complaint and supplementary complaint if any, documents produced by ED before the Special Court till the date of taking cognizance including statements recorded under Section 50 of PMLA, statements of the complainant/ witness statements recorded by the Special Court

- (iii) Copies of the list of statements, documents, material objects and exhibits that are not relied upon by the investigating officer must also be furnished to the accused. These are to be provided at the appropriate stage upon invocation of the provisions of Section 91 of the CrPC (Section 94 of the BNSS) (*Summons to produce document or other thing*). Ordinarily, the stage for supply of documents not relied on by ED does not arise until framing of charges and arises at the time of entering defence of the accused. However, an accused may seek these documents at the time of hearing of a bail application to enable him to discharge the burden of proof under Section 24 of PMLA. However, the Special Court may deny it at such stage if it is shown that the ongoing investigation may be prejudiced.

The court interpreted Sections 17, 18, 20, and 21 of the PMLA in conjunction with Section 91 of the CrPC and emphasized that denial of access to documents relied on by ED (and in certain cases documents not relied on) violates the right to a fair trial under Article 21 of the Constitution.

It was held that even though the PMLA does not expressly mandate application of Sections 207 (*Supply to the accused of copy of police report and other documents*) and 208 (*Supply of copies of statements and documents to accused in other cases triable by Court of Session*) CrPC, the Court directed that their principles must be applied to protect the accused's right to a fair trial. The judgment clarified that while the accused may not rely on unrelayed documents at the stage of framing charge, they can invoke Section 91 CrPC at a later stage for their production.

[Sarla Gupta & Anr. v. Directorate of Enforcement](#)

### PROCEEDINGS/SUMMONS UNDER PMLA VALID DESPITE DISCHARGE IN SCHEDULED OFFENCE

The **High Court of Jammu & Kashmir and Ladakh** held that discharge in the scheduled offence does not *ipso facto* vitiate proceedings under the PMLA. The Court while dismissing a petition seeking quashing of Enforcement Case Information Report (ECIR), summons under S. 50, PMLA and related proceedings initiated after discharge in NDPS case held that:

- a. Relying on the law laid down in *Vijay Madanlal Choudhary vs. Union of India* [(2023) 12 SCC 1] the court reiterated that though the offence under S. 3 of the PMLA is dependent on the scheduled offence, but the same becomes a separate and independent offence once the activity of money laundering begins.
- b. Relying on the judgment in *Pavana Dibbur vs. The Directorate of Enforcement* [(2023) 15 SCC 91], the court reiterated that a person accused of an offence under S. 3 of the PMLA need not necessarily be an accused in the scheduled offence.
- c. Relying upon the case of *Director, Enforcement Directorate & Anr. vs. Vilelie Khamo* [SLP (Crl.) No. 15189 of 2024], it was held that issuance of summons under S. 50, PMLA is an essential element of due process and distinct procedural action not barred merely by discharge in the scheduled offences. Accordingly, the court refused to quash the summons merely on account the discharge in the scheduled offence.
- d. Mere discharge or quashing of an FIR by a court does not automatically result in the quashing of ECIR. The decision to uphold or quash an ECIR must be evaluated independently and on a case-by-case basis considering factors such as stage of investigation, identification or tracing of proceeds of crime, etc.

[Niket Kansal vs. Union of India, through Enforcement Directorate](#)

## CODE OF CRIMINAL PROCEDURE

### WARRANT OF ARREST CAN BE TREATED AS GROUNDS OF ARREST

In this case, the Accused was arrested for certain offences under the Indian Penal Code, 1860. The arrest was challenged before the High Court claiming that the grounds of arrest, though furnished, were not meaningful, lacked material particulars, and were just an eyewash. The High Court dismissed the challenge, which was appealed against before the Supreme Court. Relying upon the landmark case of *Vihaan Kumar v. State of Haryana & Anr.* (2025 SCC OnLine 269), the **Supreme Court** emphasized the importance of communicating the reasons of arrest to the accused to enable him to challenge the arrest. While holding the grounds of arrest to be valid and sufficient, the court held that if a person is arrested on a warrant, the warrant itself comprises the grounds of arrest and reading over of the warrant to him is sufficient compliance of the requirement to inform an accused of the grounds for arrest.

[Kasireddy Upendar Reddy vs. State of Andhra Pradesh & Ors.](#)

### STATEMENT OF ACCUSED RECORDED UNDER S.161 OF CRPC CANNOT BE CONSIDERED WHILE DECIDING GRANT OF ANTICIPATORY OR REGULAR BAIL

The **Supreme Court** held that the High Court erred in considering the statement made by co-accused under Section 161 of CrPC by placing reliance on Section 30 of the Evidence Act, 1872 at the stage of granting anticipatory bail. The Court held that Section 30 presupposes the fulfilment of the following conditions- (a) there must be a joint trial for the same offence, (b) it must be a confession, (c) the confession must inculpate or implicate the maker and the other accused and (d) the confession of guilt must be proved. Unless these conditions are satisfied, a confession cannot be considered under Section 30. Furthermore, what is admissible under Section 30 can only be taken into account after it has been proved and rendered admissible during trial. A confession made before a police officer is not admissible in evidence at all. The Court thus emphasised that Section 30 has no application to confessional statements of an accused to implicate a co-accused. Even if such a confession is to be considered at the stage of anticipatory or regular bail, it can be used only as a matter of prudence and merely to lend assurance to other corroborative evidence not as standalone

proof. Only cases where statements under Section 161 of CrPC can be considered at the stage of bail are statements of witnesses and not accused persons.

[P Krishna Mohan Reddy v The State of Andra Pradesh](#)

**SC AFFIRMS THAT THE DATE OF FILING COMPLAINT IS RELEVANT FOR COMPUTING LIMITATION UNDER SECTION 468 OF CRPC**

The **Supreme Court** relying upon *Bharat Damodar Kale & Anr. v. State of Andra Pradesh*, held that for computing the limitation period for taking cognizance of a complaint under

Section 468 of CrPC, the relevant period is the date of filing the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. Thus, the delay in taking cognizance will not render the complaint time barred. Accordingly, where Section 468 of CrPC provides for a limitation period of three years for taking cognizance, the relevant consideration is whether the complaint was filed or prosecution was initiated within three years from the date of commission of the offence.

[Ghanshyam Soni v. State & Anr.](#)

## NEGOTIABLE INSTRUMENTS ACT

**NO OBLIGATION UPON THE COMPLAINANT TO STATE SPECIFIC ADMINISTRATIVE ROLE IN S. 138 COMPLAINT**

The **Supreme Court** held that specific and administrative role of company directors (which would be within the special knowledge of the company or its directors) is not required to be pleaded in the complaint for fastening vicarious liability as per S. 141 of the NI Act. The Court further noted that the

exact repetition of the words of S. 141(1) in the complaint is not the mandate of the law. To infer vicariously liability, the complaint should spell out that a person sought to be arrayed as an accused falls within the parameters of S. 141(1).

[HDFC Bank Limited vs. State of Maharashtra and Anr.](#)

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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)

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