

White-Collar Crime & Corporate Investigations Monthly Newsletter

PREVENTION OF MONEY LAUNDERING ACT

CIRCULAR: ED CANNOT ISSUE SUMMONS TO ADVOCATES, EXCEPT UNDER EXCEPTIONS TO S. 132 OF BSA WITH ED DIRECTOR'S PRIOR APPROVAL

The Deputy Director (Legal) of the Directorate of Enforcement (ED) has issued Technical Circular No. 03/2025 dated June 20, 2025 clarifying that legal practitioners/advocates cannot be compelled to disclose any communication made in the course of and for the purpose of their professional service except with their client's express consent, as is the mandate of S. 132 of the Bharatiya Sakshya Adhinyam, 2023 (BSA). Further, if any summons are to be issued under the exceptions carved out to this rule under S. 132 of BSA (viz. for communications made in furtherance of any illegal purpose or any fact observed by advocate showing that crime or fraud is committed), the same shall be issued with the prior approval of the Director, ED.

[Technical Circular No. 03/2025 dated June 20, 2025](#)

SUPREME COURT STAYS SUMMONS ISSUED TO ADVOCATE REPRESENTING CLIENT IN A FIR

The Assistant Commissioner of Police, Gujarat issued summons to an advocate representing his client in relation to an FIR. The advocate challenged the summons before the High Court, which dismissed it on the ground that the summons was issued to him under S. 179 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) as a witness and the authorities had the power to investigate. On Appeal, the **Supreme Court** stayed the summons. The Court *prima facie* observed that, apart from the rights guaranteed under Article 19(1)(g) of the Constitution of India to practice their profession, advocates have certain rights and privileges being legal professionals and in view of the statutory bar under

S.132 of BSA (discussed above). Subjecting advocates to the constant call of investigating agencies *prima facie* undermines professional autonomy and the administration of justice. Accordingly, the Court issued notice to Attorney General of India, Bar Council of India etc. for assistance to address two issues: (i) can a lawyer advising a party be directly summoned by the investigating agency/police for questioning; and (ii) if the investigating agency/police believes the individual's role goes beyond that of a lawyer, should they be allowed to summon directly, or should judicial oversight be required in such exceptional cases?

[Ashwinkumar Govindbhai Prajapati v. State of Gujarat & Anr.](#)

ARBITRATION PROCEEDINGS CAN CONTINUE PARALLELY WITH PMLA PROCEEDINGS INITIATED BY ED

The **Delhi High Court** dismissed the petition filed under Article 227 of the Constitution of India and affirmed the arbitral tribunal's order rejecting the application under S. 16(3) r/w S. 32(2)(c) of the Arbitration and Conciliation Act, 1996 (Act) to terminate the proceedings on the ground that ED had provisionally attached certain assets forming subject matter of the arbitration proceedings. The Court held that parallel proceedings initiated by Central Bureau of Investigation or ED does not preclude the arbitrator's jurisdiction. Accordingly, transaction or incident giving rise to both civil and criminal proceedings can proceed simultaneously. However, if the findings of the arbitrator overlap with the Prevention of Money Laundering Act, 2002 (PMLA) proceedings, the PMLA proceedings will take precedence in view of S. 41 of PMLA (which bars jurisdiction of civil courts).

[Lata Yadav v. Shivakriti Agro Pvt. Ltd & Ors.](#)

BHARATIYA NAGARIK SURAKSHA SANHITA

POLICE CANNOT SEIZE/FREEZE BANK ACCOUNTS EXCEPT IN ACCORDANCE WITH S.107 OF BNSS

The **Kerala High Court** quashed a notice issued by the police to the bank to debit freeze the petitioner's account allegedly

containing proceeds of crime and lifted the debit freeze. The Court observed that attachment of proceeds of crime (i.e., any property believed to be derived directly or indirectly from criminal activity or the commission of an offence) can only be sought under S.107 of BNSS, which requires an order from the

Magistrate. The High Court noted the distinction between seizure under S. 106 of BNSS which can be carried out by a police officer to secure evidence during investigation without Magistrate's order and attachment under S.107 of BNSS intended to secure the proceeds of crime, which mandates Magistrate's order. In this case, the Court noted that money in petitioner's account can at best be considered proceeds of crime, which can be attached/account can be frozen under S.107 of BNSS after Magistrate's order (which was not obtained).

[Headstar Global Pvt. Ltd. v. State of Kerala & Ors.](#)

KERALA HIGH COURT IMPLEMENTS E-FILING FACILITIES FOR APPEALS AND PETITIONS FROM PRISONERS

The **Kerala High Court** has issued a Notification dated June 24, 2025 implementing a new system, with effect from July 1, 2025, for digital processing of appeals and petitions filed by prisoners under S. 424 of the BNSS (which enables an appellant in jail to present his appeal to the officer in charge who is to forward it to the appellate court) across all jails in the State.

[Notification dated June 24, 2025](#)

CODE OF CRIMINAL PROCEDURE

IN AN APPEAL FILED BY ACCUSED/CONVICT HIGH COURT CANNOT SUO MOTO ENHANCE SENTENCE OR CONVICT HIM ON ADDITIONAL CHARGES

The **Supreme Court** reaffirmed the position taken in *Sachin v. State of Maharashtra* and held that in an appeal filed by the accused/convict under S. 374 of the Code of Criminal Procedure, 1973 (CrPC), the High Court cannot *suo motu* exercise revisional jurisdiction under S. 401 of CrPC to either

enhance the sentence or convict the appellant for an offence of which he was acquitted by the trial court. The Court observed that the appellant cannot be placed in a worse position than before he filed an appeal (*reformatio in peius*). Accordingly, the Court set aside the conviction and sentence of the accused for which he was not charged by the trial court.

[Nagarajan v. State of Tamil Nadu](#)

NEGOTIABLE INSTRUMENTS ACT

ACQUITTAL ORDERS CAN BE CHALLENGED IN CHEQUE BOUNCING CASES WITHOUT SPECIAL LEAVE TO APPEAL

The **Supreme Court** held that even though the Negotiable Instruments Act, 1881 (NI Act) does not provide for filing of an appeal, the provisions of CrPC would apply. The Court observed that a complainant under S. 138 of the NI Act, having suffered economic loss and injury qualifies as a 'victim' under S. 2(wa) of the CrPC. Therefore, he is entitled to the

benefit of proviso to S. 372 of the CrPC (which allows a victim to file an appeal against an order acquitting, convicting of lesser sentence or imposing inadequate compensation to the accused) without seeking special leave under S. 378(4) of CrPC.

[M/s Celestium Financial v. A. Gnanasekaran & 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, Sourabh Arora and Parag Kabra.