

White-Collar Crime & Corporate Investigations Monthly Newsletter

PREVENTION OF MONEY LAUNDERING ACT

SUPREME COURT ALLOWS SUBSTITUTION OF A PROVISIONALLY ATTACHED PROPERTY BY ED UNDER PMLA

The Supreme Court permitted the substitution of a property provisionally attached under the Prevention of Money Laundering Act, 2002, with certain other unencumbered property. The Appellants had first approached the High Court of Punjab and Haryana seeking inter alia, substitution of the attached assets. However, the High Court dismissed their prayer stating that there is no provision under PMLA permitting such substitution. However, in a Special Leave Petition filed against High Court's order, the Supreme Court permitted the substitution basis Enforcement Directorate's (ED) consent and subject to satisfaction of certain conditions stipulated by ED such as submission of a no-encumbrance certificate, undertaking not to alienate the substituted property, production of title documents, and execution of an indemnity bond. Pertinently, the Supreme Court clarified that the order permitting the substitution is in the facts of this case and shall not be treated as a precedent.

[M3M India Pvt. Ltd. & Anr. vs. Union of India & Ors.](#)

PRE-COGNIZANCE HEARING UNDER S. 223, BNSS APPLIES TO SPECIAL LAWS SUCH AS PMLA AND NON-COMPLIANCE OF THE SAME VITIATES COGNIZANCE AND FURTHER PROCEEDINGS

The *Calcutta High Court*, relying upon the Supreme Court's decision in *Kushal Kumar Agarwal vs. Directorate of Enforcement* [Criminal Appeal No. 2749 of 2025], held that failure to grant a hearing to an accused prior to taking cognizance of an offence upon a complaint (*see proviso to Section 223(1), BNSS*) filed by the ED under Section 44(1), PMLA vitiates the order of cognizance along with the subsequent proceedings. The Court held that a complaint under Section 44(1)(b), PMLA is a complaint as defined under the CrPC/ BNSS and not a chargesheet. Such failure is not merely a curable irregularity (under Section 506, BNSS) but directly affects the personal liberty of an individual under Article 21 of the Constitution of India. Further, the court clarified that the requirement to provide pre-cognizance hearings is applicable to complaints under special laws as well.

[Tutu Ghosh vs. Enforcement Directorate](#)

BHARATIYA NAGARIK SURAKSHA SANHITA

POLICE CANNOT REFUSE TO REGISTER FIR EVEN IF THE COMPLAINT IS SENT FROM A FOREIGN COUNTRY

In the present case, an Indian citizen residing in Australia filed a complaint against her husband by sending an e-mail to the police. However, police refused to take action stating that an unsigned complaint sent through email cannot be accepted and the complainant's personal presence cannot be secured as she resides in Australia. This was challenged by the complainant before the *Kerala High Court*, which observed that Section 173 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a shift in how the police handles information relating to commission of a cognizable offence and gives statutory recognition to Zero FIR to ensure victims can file complaints regardless of jurisdiction. Consequently, it was held that the police cannot refuse to register an FIR if a

cognizable offence is made out in the complaint, even if the complaint is forwarded from a foreign country.

[XXX vs. State of Kerala and Ors](#)

BAR ON GRANT OF ANTICIPATORY BAIL PURSUANT TO THE UP AMENDMENT OF 1976 TO CRPC DOES NOT APPLY TO BNSS

In a recent judgment, the *Allahabad High Court* changed the regime for grant of anticipatory bails for certain offences applicable in the State of Uttar Pradesh. By way of a 1976 amendment, applicable in Uttar Pradesh, sub-Section (6) was inserted in the provision governing anticipatory bails i.e. Section 438 of Code of Criminal Procedure, 1973 (CrPC), which created a statutory bar on grant of anticipatory bails in

inter alia offences pertaining to certain special statutes specified therein and in cases where the offence is punishable with death. Further, the settled legal position discouraged filing of successive anticipatory bail applications on the same facts and circumstances as it amounts to abuse of the process of law, and a subsequent bail application is maintainable if there is a material change in the facts or in law.

In the present case, the Applicant approached the Allahabad High Court under Section 482 of BNSS seeking anticipatory bail (ABA), after rejection of his ABA by the Sessions Court under the same provision. Notably, before these ABAs under BNSS, the Applicant had previously also sought an ABA under the provisions of CrPC which was rejected due to bar under Section 438(6) of the CrPC. The Respondent (State) opposed the maintainability of the ABA under BNSS on account of inter alia the statutory bar under section 438 (6) of CrPC, which would apply in the present case as the offence, filing of chargesheet took place prior to July 1, 2024 when BNSS came into force.

While rejecting the Respondent's argument, the court held that the statutory bar contained in Section 438(6) of the CrPC no longer exists under the BNSS, the enactment whereof created a material change in both law and fact warranting fresh consideration of the present ABA on merits. Further, invoking the doctrine of beneficial legislation, the Court observed that the applicant is entitled to the benefit of the more liberal procedural framework introduced by the BNSS and allowed the application.

[Abdul Hameed vs. State of U. P.](#)

NOTICE UNDER SECTION 35(3), BNSS CANNOT BE ISSUED THROUGH ELECTRONIC COMMUNICATION

The **Supreme Court** held that a notice under Section 35(3) of BNSS (i.e. notice issued by the police requiring attendance of an accused whose arrest is not required) cannot be validly served through electronic communication (including WhatsApp). The Court reiterated the position held in its earlier order dated January 21, 2025 ([covered here](#)) and held that:

- (i) Section 35(6) of BNSS grants discretionary power to the police to arrest an accused who fails to comply with a notice under Section 35(3). Since the substantive rights of an individual are concerned, the service of such

notice must be carried out in a manner to protect such rights.

- (ii) Section 530 of BNSS (*Trial and proceedings to be held in electronic mode*) specifies the circumstances in which electronic communication is permissible which do not have a bearing on the personal liberty of an individual. However, service of a notice under Section 35 is specifically excluded from the ambit of Section 530 of BNSS.
- (iii) Summons issued under Section 63 of BNSS (*Form of summons*) and Section 71 of BNSS (*Service of summons on witness*), being summons issued by a court and not affecting an individual's liberty, cannot be equated with a notice under Section 35(3) of BNSS.
- (iv) Police can use electronic modes of communication only for (a) service of summons to produce documents (Section 94, BNSS), (b) forwarding the final report (Chargesheet) to a magistrate, or (c) informing the progress of investigation to informant or victim (Section 193(3), BNSS).

[Satender Kumar Antil vs. Central Bureau of Investigation and Anr.](#)

NO BAR TO RE-ARREST IF THE PREVIOUS ARREST HELD ILLEGAL SOLELY ON TECHNICAL GROUNDS

The **Delhi High Court** has held that there is no prohibition on the re-arrest of an accused whose earlier arrest was declared illegal solely on technical grounds. In this case, the accused contended that as his earlier arrest was declared illegal due to the police's failure to provide grounds of arrest, he could not be re-arrested by furnishing grounds of arrest and the same is violative of Article 21 of the Constitution. The Court held that there is no statutory embargo in the BNSS or CrPC prohibiting the re-arrest of an individual and such re-arrest is permissible if it complies with the procedure established by law and is supported by sufficient incriminating material. A lapse on the part of the investigating agency, whether inadvertent or deliberate, cannot result in a blanket immunity to the accused against any future arrest in the same case. In arriving at this conclusion, the Court referred to *inter alia* the Supreme Court's decision in **Rakesh Kumar Paul vs. State of Assam** [(2017) 15 SCC 67], which held that an accused's release on default bail shall not prevent his rearrest on cogent grounds. The Delhi High Court also referred to the Bombay

High Court's decision in **Vicky Bharat Kalyani vs. State of Maharashtra** [2025 SCC OnLine Bom 193], where the Court *inter alia* observed that an investigation agency is not precluded from re-arresting an accused on due compliance of procedure established by law (such as furnishing grounds of

arrest). However, the Court referred six questions of law to a larger bench including the issue of re-arrest.

[Anwar Khan @ Chacha & Ors. vs. The State NCT of Delhi](#)

CODE OF CRIMINAL PROCEDURE

FAILURE TO EXHAUST REMEDIES UNDER SECTION 154(1) & (3), CRPC DOES NOT VITIATE MAGISTRATE'S ORDER UNDER SECTION 156(3) DIRECTING REGISTRATION OF FIR

In an unprecedented judgment, the **Supreme Court** upheld a High Court order which refused to quash a Magistrate's order under Section 156(3) of the CrPC directing registration of FIR despite the failure to file a complaint under Section 154(1) to the officer in charge of police station and under Section 154(3) to the Superintendent of Police. The Court held that in such a case, the Magistrate ought not to ordinarily entertain an application under Section 156(3), CrPC in absence of such complaints and ought to have directed the Complainant to exhaust his remedies as per Section 154. However, as the Magistrate is otherwise competent to direct registration of an FIR under Section 156(3), such an order would amount to a mere procedural irregularity which would not vitiate the proceedings.

[Anurag Bhatnagar & Anr vs. State \(NCT of Delhi\) & Anr.](#)

TIME TAKEN FOR PRE-ARREST MEDICAL EXAMINATION CANNOT JUSTIFY DETENTION BEYOND 24 HOURS

The **Bombay High Court** held the arrest of the Petitioner illegal for police's failure to produce him before the magistrate within 24 hours of arrest (which is mandated under Article 22(2) of the Constitution of India and Section 57, CrPC/ Section 58, BNSS). The Court rejected the contention of the State that the time spent towards pre-arrest medical examination should be excluded in computing the period of 24 hours observing that there is no statutory provision providing for the same.

[Hanumant Jagganath Nazirkar vs. The State of Maharashtra](#)

NEGOTIABLE INSTRUMENTS ACT

NOT NECESSARY TO NAME PARTNERSHIP FIRM IN A SECTION 138 COMPLAINT IF ALL THE PARTNERS ARE MADE ACCUSED

In a significant ruling, the **Supreme Court** has held that a complaint under S. 138 of the Negotiable Instruments Act, 1881 ("**NI Act**") filed against all the partners of a partnership firm is maintainable, even if the firm itself is not named as an accused or served with the statutory notice. The Court set aside the order passed by the High Court quashing such complaint, emphasizing that the failure to arraign the firm does not invalidate the complaint, provided the legal notice is served on all partners and they are named as accused. The Court's finding was based on *inter alia* the following considerations:

- a. **Nature of Partnership Firms:** A partnership firm is not a separate legal entity from its partners. Its name is merely a compendious term for the partners of a firm.
- b. **Partners' Liability:** Under Sections 25 and 26 of the Indian Partnership Act, 1932, partners have unlimited, joint and several liability for the firm's debts. Unlike directors or shareholders of a company (whose liability is limited), partners are personally liable for the firm's obligations.
- c. **Interpretation of 'Company' and 'Director':** Section 141 of the NI Act includes a partnership firm within the ambit of term 'company' and a partner within the ambit of term 'director' for the purpose of

fastening criminal liability. This legal fiction ensures partners can be held accountable without naming the firm separately.

[Dhanasingh Prabhu vs. Chandrasekar & Another](#)

GLOBAL ANTI-CORRUPTION COMPLAINT

UNITED STATES: NEW GUIDELINES FOR INVESTIGATION AND ENFORCEMENT OF FOREIGN CORRUPT PRACTICES ACT ISSUED BY THE U.S. DEPARTMENT OF JUSTICE

The U.S. Department of Justice (DOJ) issued Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA) on June 9, 2025, in response to President Trump's Executive Order 14208 dated February 10, 2025, on "Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security". These guidelines came into effect on June 9, 2025, and will govern all current and future investigations and enforcement actions.

Through these guidelines, the DOJ set out a list of non-exhaustive factors to evaluate whether to pursue FCPA investigations and enforcement actions. The DOJ will now

focus on corruption cases involving: (i) links to cartels or transnational criminal groups, (ii) bribery that harms fair opportunities in the U.S. companies, (iii) threats to national security or critical infrastructure, and (iv) cases of misconduct which bear strong indicia corrupt intent, substantial bribe payments, proven and sophisticated efforts to conceal bribe payments, fraudulent conduct in furtherance of bribery scheme and efforts to obstruct justice.

While the DOJ has made it clear that the above four factors are non-exhaustive, all new investigations must be approved by the Assistant Attorney General for the Criminal Division (or the official acting in that capacity) or a more senior Department official.

[Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act \(FCPA\)](#)

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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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