

White-Collar Crime & Corporate Investigations Monthly Newsletter

BHARATIYA NAGARIK SURAKSHA SANHITA

REMEDY FOR QUASHING UNDER ARTICLE 226 IS NOT AVAILABLE AFTER ORDER OF COGNIZANCE

The *Supreme Court* held that the Bombay High Court erroneously dismissed a petition filed under Article 226 of the Constitution of India read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (inherent power of the court) for quashing of an First Information Report (FIR) on the ground that after filing of a chargesheet, such petition had become infructuous. The Court clarified that in *Neeta Singh & Ors. v. State of Uttar Pradesh & Ors.*, the jurisdiction under Article 227 of the Constitution or Section 482 of the Criminal Procedure Code, 1973 9 (CrPC) had not been

invoked. Further, the cognizance of the offence was taken by the relevant criminal court. The Court clarified that it was in such circumstances that the writ petition under Article 226 of the Constitution was held infructuous and the impugned order was upheld. However, in the present case, since the petition was under Article 226 read with Section 528, even after an order of cognizance passed after filing of the chargesheet, the court had the power to entertain the quashing petition wherein the prayer could be moulded to include quashing of the chargesheet and the order of cognizance.

[Pradnya Pranjal Kulkarni v. State Of Maharashtra & Anr](#)

CODE OF CRIMINAL PROCEDURE

SC LAYS DOWN STEPS TO BE CONSIDERED WHILE DECIDING A QUASHING PETITION

The *Supreme Court*, while setting aside an order rejecting quashing of criminal proceedings held that in a petition under Section 482 of the CrPC seeking quashing of FIR or criminal proceedings, it is the court's duty to determine whether the ingredients to constitute the alleged offence are made out by considering the overall circumstances. The Court laid down a four step process to determine the veracity of quashment prayer raised by an accused under Section 482 of CrPC::

- whether the material relied upon by the accused is sound, reasonable, and indubitable;
- whether the material relied by the accused is sufficient to reject and overrule the factual assertions contained in the complaint;
- Whether the material has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant.

- Whether proceeding with the trial would result in an abuse of process of the court and would not serve the ends of justice.

[Pradeep Kumar Kesarwani v. The State Of Uttar Pradesh & Anr](#)

SC HOLDS THAT CONSTITUTIONAL COURTS HAVE JURISDICTION TO DIRECT REGISTRATION OF FIR IRRESPECTIVE OF PRELIMINARY ENQUIRY

The *Supreme Court* held that a preliminary inquiry report by an investigation agency is not conclusive and does not restrict a constitutional court from independently assessing whether a cognizable offence is made out based on the allegations or material on record. Relying upon *Lalita Kumari v. Government of Uttar Pradesh* (2014) 2 SCC 1, the Court observed that when information discloses a cognizable offence, registration of FIR under Section 154 CrPC is mandatory.

[Vinod Kumar Pandey & Anr. v. Seesh Ram Saini & Ors](#)

PREVENTION OF CORRUPTION ACT

INVALID SANCTION NOT A GROUND FOR DISCHARGE UNDER THE PREVENTION OF CORRUPTION ACT, 1988

The **Supreme Court** set aside an order of the Karnataka High Court, under which an accused was discharged from the offence under Section 13(1)(e) read with 13(2) the Prevention of Corruption Act, 1988 (**PC Act**) on the ground that the sanction for prosecution under PC Act was invalid. The Supreme Court emphasized that under Section 19(3)(a) of the

PC Act, the absence of, or any error, omission, or irregularity in the sanction does not render a finding, sentence, or order of a Special Judge invalid. This position has been consistently upheld in *State v. T. Venkatesh Murthy* (2004) 7 SCC 763, *State of M.P. v. Virender Kumar Tripathi* (2009) 15 SCC 533, and *State of Bihar & Ors. v. Rajmangal Ram* (2014) 11 SCC 388.

[Karnataka Lokayuktha Police v. Lakshman Rao Peshve](#)

NEGOTIABLE INSTRUMENTS ACT

ERROR IN DEMAND NOTICE ISSUED UNDER SECTION 138(B) OF NI ACT IS FATAL TO CONTINUATION OF PROCEEDINGS FOR CHEQUE BOUNCING

The **Supreme Court** upheld the Delhi High Court's decision to quash a criminal complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (**NI Act**) on the basis that the claim amount in the demand notice issued under Section 138(b) was higher than the cheque amount. The Court held that NI Act being a penal statute, there must be strict compliance with the provisions of the act. Further, it is mandatory that the demand in statutory notice is the same amount as mentioned in the dishonoured cheque. In this case, the appellant issued a legal notice demanding Rs. 2 crores despite the cheque being of Rs. 1 crore only. The Court held that even a typographical error in the demand notice is fatal to its validity.

[Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul](#)

ISSUANCE OF SUMMONS NOT MANDATORY AT PRE-COGNIZANCE STAGE IN SECTION 138 PROCEEDINGS

The **Supreme Court**, in an appeal challenging an acquittal order under Section 138 of the NI Act, took note of the delays in disposal of cheque bouncing cases. The Court noted that one of the main reasons for delay in disposal of these cases is related to the service of summons issued to the accused. Accordingly, the Court issued directions to expedite these matters. One of the directions is that there shall be no requirement for the Magistrate to issue summons to the accused in terms of Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), before taking cognizance of the offence, as held by the Karnataka High Court in *Ashok v. Fayaz Ahmad*, 2025 SCC Online Kar 490.

[Sanjabij Tari v. Kishore S. Borcar & Anr.](#)

MISCELLANEOUS

CLUBBING OF FIRS ACROSS STATES ARISING OUT OF DIFFERENT TRANSACTIONS IMPERMISSIBLE

The **Supreme Court** held that multiple FIRs registered across different States arising from distinct offences cannot be clubbed. The Petitioners sought consolidation of FIRs (including future FIRs) filed in Telangana, Karnataka, Maharashtra, West Bengal, Delhi, Andhra Pradesh, and Rajasthan, claiming that they arose from the same cause of action. While permitting clubbing of multiple FIRs within a State, the Supreme Court rejected the request to club FIRs

across different States. It distinguished the case from *Amish Devgan v. Union of India and Others* (2021) 1 SCC 1, where FIRs related to a single incident. In contrast, the present FIRs arose from separate complaints by different investors claiming financial fraud – and clubbing them would make the trial impracticable.

[Odela Satyam & Anr. v. The State of Telangana & Ors](#)

IN THE ABSENCE OF EXONERATION ON MERITS, CRIMINAL PROCEEDINGS CAN CONTINUE

The **Bombay High Court** held that exoneration in departmental or regulatory proceedings will bind criminal prosecution only in limited circumstances. First, where the exoneration is on merits after considering all facts and evidence; Second, where the allegation is found to be baseless or not proved at all; and, third, where there is clear declaration of innocence or absence of guilt. Otherwise, criminal proceedings can continue. In the present case, these conditions were not met and SEBI's adjudication order contained adverse findings against the applicant in relation to him being an active participant in the asset collection drive and failure to exercise diligence as being the Chief Executive Officer though not imposing a penalty. Relying upon *Collector*

of Customs v. L.R. Melwani, AIR 1970 SC 962, *K.G. Premshanker v. Inspector of Police*, 2002 8 SCC 87, and *Radheshyam Kejriwal vs. State of West Bengal & Ors.*, 2011 2 SCC 943, the Court held that the adjudication order not imposing penalty was not a bar to criminal proceedings under Section 27(1) of the SEBI Act for being liable for commission of an offence. Accordingly, the court held that, the discharge application on this ground was rightly rejected by the Special Court.

[*Rajiv Ranjan Singh v. Securities and Exchange Board of India & 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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