

White-Collar Crime & Corporate Investigations Monthly Newsletter

BHARATIYA NAGARIK SURAKSHA SANHITA

HIGH COURT CANNOT INQUIRE INTO THE CREDIBILITY OF ALLEGATIONS OR CONDUCT A MINI-TRIAL IN A QUASHING PETITION

The Supreme Court held that while exercising power under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS) (corresponding to Section 482 of Criminal Procedure Code (CRPC)) the High Courts cannot embark into an enquiry with regard to credibility or otherwise of the allegations in the complaint and First Information Report (FIR) when deciding as to its quashing. The Court clarified that quashing is permissible only when prima facie no offence is disclosed in the FIR. Consequently, Supreme Court set aside the order passed by the High Court of Madhya Pradesh which quashed the FIR on the ground that the specific incidents which were set out in the FIR were not mentioned in the earlier complaints and were therefore an afterthought, as the same amounts to a mini trial.

[Muskan v. Ishaan Khan \(Sataniya\) and Ors.](#)

POLICE CANNOT INVOKE SECTION 106, BNSS TO DEBIT-FREEZE BANK ACCOUNTS

The Bombay High Court in a batch of writ petitions has held that police cannot unilaterally debit freeze or attach bank accounts suspected to be involved in *inter alia* cyber frauds under Section 106 of the BNSS (which provides for power of police to seize stolen property), and the same is permissible only upon approaching the jurisdictional Magistrate under Section 107 of the BNSS (a new provision which provides for attachment, forfeiture and restoration of property generated as proceeds of crime). Relying upon the decision of the Kerala High Court in *Headstar Global Pvt. Ltd. v. State of Kerala & Ors.* [2025 SCC OnLine Ker 3546] ([covered here](#)), the Bombay High Court reiterated the distinction between “seizure” under Section 106 and “attachment” under Section 107. While seizure allows police to secure tangible evidence during investigation, attachment involves judicial oversight to preserve suspected proceeds of crime.

[Kartik Yogeshwar Chatur v. Union of India & Ors.](#)

PREVENTION OF MONEY LAUNDERING ACT

SEARCH AND SEIZURE UNDER SECTION 17 OF PMLA NEED NOT BE LIMITED ONLY TO PREMISES OF PERSONS AGAINST WHOM PROSECUTION COMPLAINT IS FILED

An appeal was filed by the Directorate of Enforcement (ED) under Section 42 of the Prevention of Money Laundering Act, 2002 (PMLA) before the Delhi High Court challenging an order of the PMLA Appellate Tribunal by which the order passed by the Adjudicating Authority, PMLA confirming the retention of seized property under Section 17(4) of PMLA, was set aside. The Tribunal had passed the order on the basis that there was no prosecution complaint against the person whose properties were seized. While referring to the contours of a search and seizure conducted under Section 17 of PMLA, the Delhi High Court quashed the Tribunal’s order and held that once a prosecution complaint exists, the statutory requirements for conducting a search and seizure under

Section 17 stand satisfied and it need not be directed against the specific person whose premises are searched.

[Deputy Director Directorate of Enforcement v. Amlendu Pandey \(D\) Through LR](#)

NO FRESH PRE-COGNIZANCE HEARING REQUIRED FOR SUPPLEMENTARY COMPLAINTS UNDER THE PMLA

The Madras High Court held that an accused is not entitled to a fresh pre-cognizance hearing upon a supplementary prosecution complaint filed under the PMLA, when cognizance was already taken on the first prosecution complaint. Relying on Explanation (ii) to Section 44 of PMLA (which *inter alia* states that offence under PMLA and the scheduled offence shall be triable by the Special Court), the Court noted that a supplementary complaint is only an

extension of the original complaint on which cognizance has already been taken and not a new complaint. The Court held as such, relying on the settled legal position that cognizance is taken of the offence and not the offender, and consequently, multiple cognizance of same offence would be redundant and only delay the proceedings.

[Rahul Surana v. The Assistant Director](#)

PRE-COGNIZANCE HEARING IS MANDATORY FOR COMPLAINTS FILED UNDER PMLA

In this case, the Petitioner challenged the order passed by the Special Court, PMLA taking cognizance of the prosecution complaint filed by ED without affording him a hearing. The Petitioner's case was based on Section 223(1) of the BNSS (which states that the Magistrate must afford a hearing to the

accused before cognizance of offence is taken) and the Supreme Court's ruling in *Kushal Kumar Agarwal v. Directorate of Enforcement* (2025 SCC OnLine SC 1221), which clarified that Sections 223 to 226 of the BNSS apply to complaints under Section 44 of the PMLA. The Patna High Court rejected the ED's contention that no such right existed because cognizance had been taken before the judgment in *Kushal Kumar Agarwal (Supra)* was passed noting that where a statute already provides a procedural safeguard, its operation cannot depend on a future judicial interpretation. The law cannot operate differently before and after a Supreme Court ruling. Accordingly, the Court set aside the order passed by the Special Court, PMLA and remanded the matter for fresh consideration.

[Pushpraj Bajaj v. The Union of India & Ors.](#)

NEGOTIABLE INSTRUMENTS ACT

COST GUIDELINES FOR COMPOUNDING CHEQUE BOUNCE CASES ARE NOT BINDING IN EVERY CASE

In the present case, pending the High Court's review against an order of conviction in a cheque bounce case, the complainant and accused entered into a settlement. On the basis of the settlement and relying upon the Supreme Court's judgment in *Damodar S. Prabhu vs Sayed Babalal* [2010 SCC 5 663] (which laid down findings on inter alia the imposition of costs for compounding of offences under Negotiable Instruments Act (**NI Act**) depending on the stage at the case was compounded), the High Court acquitted the accused and imposed costs to be deposited with the State Legal Services Authorities. Consequently, an appeal was preferred with

respect to the cost imposed by the High Court wherein the Supreme Court held that the *Damodar S. Prabhu* judgment, which was invoked using Article 142 of the Constitution, cannot be treated as a rigid, binding precedent for all settlements. The Court found the imposition of cost unsustainable, particularly since the complainant had accepted the settlement and did not object to appropriate orders. The Court agreed that mechanically imposing costs could discourage bona fide settlements, particularly at the revisional stage, and stressed that every case must be considered on its own unique facts.

[Rajeev Khandelwal v. State of Maharashtra](#)

MISCELLANEOUS

ONCE ARREST IS FOUND ILLEGAL, COURT IS DUTY BOUND TO RELEASE THE ACCUSED ON BAIL

In this case, subsequent to arrest, the accused Petitioner was not produced before the Magistrate within 24 hours of his arrest, which is the procedural mandate under Article 22(2) of the Constitution of India. Therefore, a bail application was filed on behalf of the Petitioner before the Sessions Court

wherein the court held his arrest to be in violation of the Constitutional mandate and directed his release, without expressly enlarging him on bail. However, the police re-arrested the Petitioner on jail premises itself, produced him before the Magistrate within the period of 24 hours and obtained his judicial remand. The Kerala High Court, relying upon the judgment of the Supreme Court in *Directorate of Enforcement v. Subhash Sharma* (2025 SCC OnLine SC 240)

[\(covered here\)](#), held that the Sessions Court ought to have granted bail once it found the Petitioner's arrest to be illegal. Noting that the protection under Article 22 is not merely a procedural safeguard but a fundamental bulwark, the High Court quashed the remand order and released the Petitioner on bail.

[Muhammed Nashif U v. State of Kerala & Anr.](#)

HABEAS CORPUS CANNOT BE USED TO RELEASE AN ACCUSED WHOSE BAIL HAS BEEN REPEATEDLY REJECTED

The Supreme Court set aside the Madhya Pradesh High Court's order directing release of an accused on a habeas corpus petition after his bail applications had been rejected four times. It held that custody pursuant to judicial orders cannot be treated as unlawful merely because bail has been repeatedly denied. The Court clarified that a habeas corpus petition cannot be used to bypass the statutory process for seeking bail or as a substitute for challenging bail refusals. The Supreme Court further held that a High Court cannot consider the case on merits as if it was hearing appeal against the order rejecting the bail application. Further, the Court ruled that a habeas corpus petition cannot be used as a substitute for challenging bail rejection orders or to secure release after dismissal of bail pleas.

[State of Madhya Pradesh v. Kusum Sahu](#)

GROUND OFS OF ARREST MUST BE FURNISHED IN WRITING IN A LANGUAGE THE ARRESTEE UNDERSTANDS, ATLEAST TWO HOURS PRIOR TO PRODUCTION FOR REMAND PROCEEDINGS, FAILURE OF WHICH SHALL RENDER THE ARREST/ REMAND ILLEGAL

The Supreme Court held that the requirement to inform an arrested person of the grounds of arrest is mandatory in every case and is not statute specific. The Court held that the grounds must be given in writing and in a language the

accused person understands and if the police are already in possession of documentary material justifying arrest, the written grounds must be supplied when arrest is made. However, it was clarified that non supply of these grounds prior to or immediately after the arrest would not vitiate the arrest, and in exceptional circumstances where the written grounds cannot be supplied immediately, oral communication is permissible initially but a written copy must be supplied within a reasonable time and in any event at least two hours before the arrestee is produced for remand. The remand papers must also contain the written grounds and if there is a delay in supplying them, the papers should record reasons for such delay. It was held that failure to comply with these requirements will render the arrest and any subsequent remand illegal and entitle the person to be released.

[Mihir Rajesh Shah v. State of Maharashtra and Anr.](#)

HC HOLDS THAT CYBER FRAUD FIRs CANNOT BE QUASHED MERELY ON COMPROMISE AS SUCH OFFENCES DAMAGE THE DIGITAL ECONOMY

The Punjab and Haryana High Court have held that FIR involving genuine cyber fraud cannot be quashed solely based on a settlement between the complainant and the accused. The rationale is that cyber fraud is considered a systemic offense against public trust and the digital economy, not merely a private dispute, and private restitution does not cure the larger institutional harm caused to the digital ecosystem. However, the Court acknowledged that, if the cyber fraud allegations were merely a strategy to inflate the seriousness of a simple pecuniary dispute, the Court may sanction a bona fide compromise to serve the ends of justice. The Court further held that in order to apply the correct principle, the Court must undertake a scrupulous and granular scrutiny of the entire factual milieu and must pass a speaking order detailing its reasons.

[Badri Mandal & others v. State of Haryana](#)

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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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