

White-Collar Crime & Corporate Investigations Monthly Newsletter

BHARATIYA NAGARIK SURAKSHA SANHITA

HC HOLDS THAT FALSE FIRs AND NON-COGNIZABLE CASES CANNOT BE PROSECUTED BY MISUSING POLICE AND MAGISTERIAL PROCESS

The *Allahabad High Court* held that where allegations disclose only non-cognizable offences, the police cannot register a First Information Report (FIR) and proceed as if it were a cognizable case. Such matters must follow the statutory route meant for non-cognizable offences, and any investigation or prosecution in violation of this procedure amounts to abuse of process and a breach of personal liberty. The Court further held that if, after investigation, the case is found to be false, the police are required to take action for furnishing false information and cannot simply close the matter without following the statutory mechanism for initiating proceedings against the informant. It clarified that when a final report is filed in a non-cognizable case, the Magistrate must treat it as a complaint case and follow the procedure applicable to complaint trials. Treating such matters as police cases, ignoring statutory safeguards, or summoning accused without following the prescribed process was held to be legally unsustainable.

[Umme Farva v. State of U.P. and Another](#)

SC CLARIFIES MANDATORY SAFEGUARDS BEFORE ORDERING INVESTIGATION AGAINST PUBLIC SERVANTS

The *Supreme Court* laid down the procedure a Magistrate must follow when a complaint seeks investigation against a public servant for acts connected with official duties. It held that Section 175(4) Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) cannot be applied in isolation and must be read along with Section 175(3). Before a Magistrate can direct registration of an FIR or investigation, the complainant must first approach the Superintendent of Police and file a written complaint supported by an affidavit as per the judgement of *Priyanka Srivastava v. State of UP*. The Magistrate is also required to call for a report from the superior officer of the public servant concerned and consider that version before passing any order. These steps are mandatory and are intended to protect public servants from false or motivated complaints while ensuring that genuine grievances are not blocked. The Court clarified that the term "complaint" under Section 175(4) means a formal written complaint supported by an affidavit and not a mere oral allegation. It further held that these safeguards apply only when the alleged offence is reasonably connected with discharge of official duty and if

the act has no such connection, the ordinary procedure for directing investigation applies.

[XXX v. State of Kerala & Ors](#)

WRIT COURTS CANNOT COMPEL FILING OF CHARGE-SHEETS OR FIX RIGID TRIAL TIMELINES

The *Supreme Court* while setting aside an order of the Madras High Court held that a writ court, while exercising jurisdiction under Article 226 of the Constitution, cannot direct an investigating agency to file a charge-sheet or compel the completion of an investigation within a fixed time-frame. The Court observed that such directions are "unwarranted" as they foreclose the statutory discretion of the Investigating Officer to form an independent opinion based on the collected material. The Court emphasized that a command to file a charge-sheet intrudes into the exclusive domain of the executive and the investigating agency and Under the CrPC and BNSS, the formation of an opinion on whether to place an accused for trial must be taken solely by the IO; a charge-sheet can only be filed if the IO forms a positive opinion that the materials warrant prosecution. Furthermore, the Court cautioned that fixing rigid trial timelines without considering the stage of proceedings could render the concept of a "fair trial" a casualty.

[A. Shankar v. Secretary to Government](#)

PROTECTION FROM ARREST CANNOT BE GRANTED WHILE REFUSING TO QUASH AN FIR

In a batch of appeals filed by the State of U.P. contending the violation of *Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra* [(2021) 19 SCC 401], the *Supreme Court* has reiterated that a High Court cannot grant protection from arrest and set investigation deadlines while refusing to quash an FIR. The Supreme Court held that timelines for investigation cannot be routinely drawn by the courts right from the beginning as that would amount to encroaching upon the domain of investigating agencies. In this case, the Allahabad High Court had granted protection from arrest to the accused persons till the cognizance is taken and had set a deadline of 90 days for completion of the investigation. However, the Supreme Court while withdrawing the protection from arrest and setting aside the timeline for investigation, differentiated the present case from the High Court's judgment in *Shobhit Nehra vs. State of U.P.* [Criminal

Misc. Writ Petition No. 7463/2024] wherein while refusing to quash the FIR, no arrest protection and direction for time bound investigation were given due to dubious nature of the allegations and pendency of long standing civil disputes between the parties who were family members.

[State of U.P. & Anr. vs. Mohd Arshad Khan & Anr.](#)

POLICE CAN FREEZE BANK ACCOUNTS UNDER SECTION 102, CRPC IN CASES INVOLVING PC ACT

The **Supreme Court** has held that police have the power under Section 102 of the Criminal Procedure Code, 1973 (CrPC) to freeze bank accounts involved in offences under the Prevention of Corruption Act, 1988 (PC Act). The Court

clarified that although the seizure power under Section 102, CrPC and the attachment procedure under the Criminal Law Amendment Ordinance, 1944 (**Ordinance**), as applied to the PC Act through Section 18A, are distinct, they have a similar effect of placing property under the custody of the investigating or judicial authority. The Court further held that these powers are not mutually exclusive, as Section 102 enables swift police action to facilitate investigation, whereas the procedure under the Ordinance requires judicial approval and compliance with principles of natural justice, making it a more time consuming and deliberative process.

[State of W.B. vs. Anil Kumar Dey](#)

NEGOTIABLE INSTRUMENTS ACT

HC HOLDS THAT INTERIM COMPENSATION UNDER SECTION 143A NI ACT IS DISCRETIONARY AND CANNOT BE GRANTED MECHANICALLY

The **Gauhati High Court** held that the power to award interim compensation under Section 143A of the Negotiable Instruments Act (**NI Act**) is discretionary and not be exercised mechanically. The Court held that before directing interim compensation, the trial court must be satisfied that the complainant has made out a clear *prima facie* case and must also consider the defence raised by the accused. Where the accused disputes issuance of the cheque, denies the signature, or raises serious questions about the existence of a legally enforceable debt and such defence is found *prima facie* plausible, in such cases the discretion to refuse interim compensation must be exercised by the courts.

[Sri Madhu Ram Dekha v. The State of Assam & Anr.](#)

MANDATORY PRE-COGNIZANCE HEARING UNDER BNSS NOT APPLICABLE TO NI ACT COMPLAINTS

The **Gauhati High Court** while setting aside the order of a magistrate directing a pre-cognizance notice to the accused held that NI Act being a special statute is governed by its own self-contained and summary procedure. The court further clarified that the procedural mandate under the first proviso to Section 223(1) of the BNSS requiring an accused to be heard before the court takes cognizance does not apply to complaints filed under Section 138 of the NI Act. The Court emphasized that applying the general requirement of Section 223 BNSS to NI Act proceedings would lead to procedural delays, frustrating the legislative intent of expeditious trial.

[PD Savera LLP v. Galacon Infrastructure and Projects Pvt. Ltd. & Ors.](#)

MISCELLANEOUS

MINISTRY OF HOME AFFAIRS SOP ON CYBER FINANCIAL FRAUDS

The Ministry of Home Affairs (**MHA**) has approved a Standard Operating Procedure (**SOP**) for the management of cyber financial frauds under the National Cybercrime Reporting Portal (**NCRP**). The NCRP is a platform that enables the public to report cybercrimes, with a special focus on online Child Sexual Abuse Material (**CSAM**). Reporting financial fraud under the NCRP is facilitated through one of its modules viz.

the Cyber Financial Crime Reporting and Management System (**CFCRMS**).

The SOP seeks to:

- establish a pan-India framework for handling cyber financial frauds by prescribing uniform procedures for banks, NBFCs, payment aggregators, e-commerce platforms, stock-trading applications, and mutual fund houses;
- ensure swift freezing of fraudulent transactions;

- enable prompt restoration of funds to victims, including the processing of refunds of defrauded amounts up to Rs. 50,000/- without a court order, and mandate unfreezing of bank accounts within 90 days in the absence of a court or restoration order; and
- fix accountability on financial intermediaries.

To strengthen coordination among financial institutions, law enforcement agencies, and victims, the SOP also envisages development of two new modules i.e., a Grievance Redressal Module and a Money Restoration Module.

[Standing Operating Procedure dated January 2, 2026](#)

PRIVATE COMPLAINT IS NOT MAINTAINABLE FOR OFFENCES ASSOCIATED WITH FRAUD UNDER THE COMPANIES ACT

In this case, a private complaint was filed by promoters of a private company under Sections 448 (Punishment for making a false statement) and 451 of the Companies Act, 2013 (Act) (Punishment for repeated default) and for IPC offences, against the accused persons/appellants who were the former directors in the company. The appellants challenged the complaint proceedings before the Telangana High Court under Section 482 of the Criminal Procedure Code, 1973 (CrPC) *inter alia* on the ground that cognizance of offences involving fraud - particularly Section 447 of the Act is barred by Section 212(6) of the Act which requires a complaint under Section 447 to be filed by the Serious Fraud Investigation Office (SFIO) or an authorized agency.

The **Supreme Court** while partly allowing the appeal and setting aside the order passed by the High Court, held that a Special Court must invoke Section 447 if it proceeds to take cognizance of an offence which would make an accused liable under Section 447 and must comply with the bar on cognizance as provided in S. 212(6). The Supreme Court noted:

- Post the Companies (Amendment) Act, 2015 w.e.f. 29.05.2015, Section 212(6) includes the phrase 'offence covered under S. 447'. If intention of legislature was to

put a bar on cognizance only qua Section 447, then the inclusion of the said phrase in Section 212(6) would have no relevance.

- Section 448 only provides for the ingredients of the offence of making a false statement. However, the person accused of such offence shall be liable under Section 447. Hence, Section 448 is linked to Section 447 and would attract a bar under Section 212(6).
- Non-invocation of Section 447 from the inception would lead to procedural absurdity.

[Yerram Vijay Kumar & Anr. vs. The State of Telangana & Anr.](#)

DELHI HC AMENDS RULES: TERM "PARTIES" TO INCLUDE COMPLAINANT AND VICTIM

The **Delhi High Court** has notified amendment to the Delhi High Court Rules & Orders, specifically Part C of Chapter 16 of Volume IV, expanding the definition of "parties" in criminal proceedings. The amendment provides that in criminal cases, the term "parties" shall be deemed to include the complainant and/or the victim. For the purposes of this rule, the terms "complainant" and "victim" are defined as per Section 2(y) of the BNSS or Section 2(wa) of the CrPC.

[Notification No. 2/Rules/DHC dated 19.01.2026](#)

LOK ADALAT SETTLEMENTS ONLY VALID WITH PARTIES' PRESENCE OR WRITTEN AUTHORITY TO COUNSEL

The **Gauhati High Court** held that a settlement recorded in a National Lok Adalat is legally unsustainable if it is arrived at without the presence of the parties or a specific written authorization empowering their counsel to enter into such a compromise. The Court emphasized that the core objective of the *Legal Services Authorities Act, 1987* is to facilitate settlements based on the free and informed consent of the parties themselves.

[Mahindra and Mahindra Financial Services Ltd. & Anr. v Hakim Uddin & 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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