PREVENTION OF MONEY LAUNDERING ACT

ARRESTS UNDER PMLA MUST BE SUPPORTED BY COGENT MATERIAL AND A LEGALLY SUSTAINABLE "REASON TO BELIEVE"

The ***Karnataka High Court,*** in writ petitions challenging the legality of arrests made by the Directorate of Enforcement under Section 19 of the Prevention of Money Laundering Act, 2002 ("**PMLA**"), held that arrest cannot be made routinely or merely as part of an investigation, but must be based on objective and contemporaneous material giving rise to a valid "reason to believe" that the accused is guilty of the offence of money laundering. Relying on decisions such as *Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929*; *Pankaj Bansal v. Union of India, (2024) 7 SCC 576*; and *Arvind Kejriwal v. Directorate of Enforcement*, *2024 SCC OnLine SC 1703* the Court reiterated that arrest under PMLA is an exceptional power subject to judicial scrutiny and cannot be used as a tool of investigation. The Court noted that the Petitioners' arrest was effected without prior summons, without fresh incriminating material and largely on recycled allegations despite earlier proceedings being closed or stayed, thereby failing to satisfy the statutory safeguards.

It was also clarified that arrests under Section 19 of PMLA require strict compliance with procedural conditions, including existence of material, recording of reasons, and communication of grounds of arrest, and any violation renders the arrest illegal. It further held that non-cooperation or evasive answers cannot justify arrest, emphasizing that personal liberty under Articles 21 and 22 of the Constitution cannot be curtailed without demonstrable necessity.

Deepak Singh v. Directorate of Enforcement

PREVENTION OF CORRUPTION ACT

BRIBE DEMANDS MADE THROUGH THIRD PARTIES ARE COVERED UNDER THE PREVENTION OF CORRUPTION ACT, 1988

The ***Supreme Court*** in this case set aside the Karnataka High Court's order quashing an FIR registered under s. 7(a) of the Prevention of Corruption Act, 1988 ("**PC Act**") which penalises acceptance or obtaining of an undue advantage in exchange for influencing a public servant in relation to performance of a public duty. While the High Court quashed the FIR on the ground that the basic ingredients of Section 7 of PC Act i.e. demand and acceptance of illegal gratification were not made out, the Supreme Court held that the High Court had exceeded its jurisdiction by conducting a "mini-trial" at the stage of quashing proceedings.

Further, while interpreting s. 7(a) read with Explanation 2 of the PC Act, the Supreme Court clarified that a public servant need not personally demand or receive a bribe to attract criminal liability. The offence also covers attempts to obtain an undue advantage for another person or through subordinates or third parties. Accordingly, allegations that the accused police officer directed the complainant to "do something" for subordinate officials, followed by a demand made by those subordinates, were sufficient to justify investigation.

The State by Lokayuktha Police v. Sri K. Rangayya & Anr

NON-RECOVERY OF TAINTED MONEY DOES NOT BY ITSELF DEFEAT A CORRUPTION PROSECUTION

The *Orissa High Court* refused to quash criminal proceedings arising from a trap case under the PC Act, holding that the mere non-recovery of tainted currency notes does not, by itself, invalidate the prosecution. The Court observed that the essential ingredients of the offence are the demand and acceptance of illegal gratification, which may be established through witness testimony, surrounding circumstances and other incriminating material even in the absence of physical recovery of the bribe amount.

The Court further upheld the decision of the Special Judge directing further investigation under s. 173(8) of the Code of Criminal Procedure, 1973 and rejecting the final report submitted by the Investigating Officer stating that no prima facie case was made out due to non-recovery of tainted money. The Court emphasized the Magistrate's power to order further investigation even in the absence of a formal prayer as such.

Akhaya Kumar Rout & Anr. v. State of Odisha (Vigilance)

BHARATIYA NAGARIK SURAKSHA SANHITA

CALCUTTA HIGH COURT LAYS DOWN PROCEDURE FOR ATTACHEMENT OF PROPERTY UNDER SECTION 107 OF THE BHARATIYA NAGARIK SURAKSHA

In this case, the Petitioner approached the Calcutta High Court challenging a Magistrate's order of attachment of her properties under Section 107 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") (which allows for attachment of property believed to have been obtained through criminal activity upon an application by a police officer and order of a magistrate). The Petitioner contended that the attachment was made despite her not being an accused in the case, and without any notice or hearing, in violation of sub-sections (2) and (3) of Section 107, BNSS. The Court set aside the Magistrate's order and laid down the mechanism for proceeding under Section 107, BNSS. The court emphasized the importance of procedural fairness to prevent infringement of the constitutional right to property, as S. 107 does not make distinction between serious economic crimes and minor offences. Further, the provision allows for ex-parte interim attachment in cases where notice would defeat the purpose of attachment but does not provide for any time limit for final adjudication and the interim order may continue indefinitely, unlike the PMLA, which limits provisional attachment for 180 days.

The Court laid down the following guidelines for attachment u/S. 107 of BNSS:

- An investigating officer must have 'reason to believe' that the property in question had been derived or obtained as a result of any offence.
- Approval must be taken from the superior concerned who is required to duly apply his mind and examine cogent material provided by the investigating officer, and satisfy himself of the necessity of the proposed attachment, before granting approval.
- The 'reason to believe' is required to be recorded in the application to a magistrate under Section 107(1), demonstrating a close connection between the offence or criminal activity and the property, along with the necessity of the attachment.
- The court is also required to apply its mind when dealing with such an application.

Puja Hari v. State of West Bengal

MAGISTRATES MUST CONDUCT MEANINGFUL SCRUTINY BEFORE SUMMONING AN ACCUSED IN COMPLAINT CASES FOLLOWING A FINAL REPORT

The *Allahabad High Court* held that a Magistrate must exercise judicial scrutiny before summoning an accused in a complaint case arising from a protest petition after the police have filed a final report. Emphasizing that a complaint inquiry cannot substitute a thorough criminal investigation in serious offences, the Court observed that Magistrates must critically evaluate the material on record, consider the reasons assigned in the final report, and record clear reasons before proceeding against the accused. The Court also laid down inter alia the following principles for conversion of a final report into a complaints case or directing further investigation:

- A Magistrate must independently assess the material before treating a protest petition as a complaint after a police final report.
- The enquiry must not be mechanical; the Magistrate must evaluate the credibility of the evidence and consider the reasons given in the final report.
- An order issuing process must reflect due application of judicial mind and record reasons for disagreeing with the investigating agency.

The High Court found that the summoning order suffered from non-application of mind, as it was based on material improvements in witness statements, unexplained gaps in the prosecution's case and inconsistent testimony and set aside the summoning order.

Lala and Another v. State of U.P. & Anr

BANKS CANNOT FREEZE ENTIRE BANK ACCOUNTS BEYOND THE AMOUNT SPECIFIED BY INVESTIGATING AUTHORITIES

The *Karnataka High Court* held that banks cannot freeze an entire bank account beyond the amounts specified by the investigating agencies issuing directions as such. The Court observed that a bank performs only a ministerial function while implementing such directions and has no authority to expand the scope of a freezing order based on apprehensions of future requests or administrative convenience. Emphasizing the principle of proportionality, the Court held that any restriction on the operation of a bank account must be strictly confined to the amount specified by the competent investigating authority unless a complete freeze is expressly directed by law.

Sri. Madhu v. The IndusInd Bank Ltd. & Anr

BHARATIYA NYAYA SANHITA

BAIL CANNOT BE DENIED MERELY BECAUSE THE ACCUSED IS CHARGED WITH AN ECONOMIC OFFENCE OR AN OFFENCE PUNISHABLE WITH LIFE IMPRISONMENT

The *Jammu and Kashmir High Court* granted bail to an accused facing charges of cheating and organized crime under the Bharatiya Nyaya Sanhita, 2023 (“BNS”), holding that the seriousness of the allegations or the fact that the offences are economic in nature does not, by itself, justify continued pre-trial detention. The Court observed that once the investigation concerning the accused had been completed and the charge sheet filed, further incarceration would be contrary to the settled principle that "bail is the rule and jail is the exception". The Court further clarified that the pendency of further investigation against other accused persons cannot be a ground to deny bail where the investigation against the applicant is complete. Accordingly, the petitioner was enlarged on bail subject to appropriate conditions.

Mohammad Iqbal Wani v. UT of J&K & Anr

PASSPORT ACT

MERE PENDENCY OF A CRIMINAL CASE CANNOT BE A GROUND TO REFUSE A PASSPORT

Based on the established legal principle that accused is presumed innocent until proven guilty and that the right to travel abroad forms part of the fundamental right to personal liberty under Article 21 of the Constitution of India, the *Andhra Pradesh High Court* directed the Regional Passport Officer to process an accused’s passport application without reference to the pending FIR, while ensuring compliance with the Passport Act, 1967 and the Passport Rules, 1980. The court relied on an earlier Division Bench decision in W.A.No.383 of 2024 which held that proceedings can be said to be "pending before a criminal court" only after the court has taken cognizance and initiated proceedings in accordance with law.

Sattaru Ram Mohan Rao v. Union of India & Ors

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

Ms. Ekta Tyagi | Partner
ekta.tyagi@dsklegal.com

Contributors:

Anjali Shah, Priyamvada Singhania, Sneha Barange, Sourabh Arora, Parag Kabra, Shreedhar Joshi and Aishwarya Pawar.