White-Collar Crime & Corporate Investigations Monthly Newsletter

PREVENTION OF MONEY LAUNDERING ACT

PMLA SPECIAL COURT CAN TRY THE SCHEDULED OFFENCE, EVEN IF IT IS NOT THE NOTIFIED COURT

The ***Kerala High Court*** dismissed a petition challenging an order committing pending trial of scheduled offence under the PMLA to the PMLA Special Court. The Petitioner CBI contended that since the offences were under the Prevention of Corruption Act, 1988, the PMLA Special Court, Kozhikode lacked jurisdiction, and the Special Court (CBI), Ernakulam was the notified court for trying such offences.

The Court reiterated the provisions of PMLA, i.e. Section 44(1)(a) which confers jurisdiction on PMLA Special Courts to try scheduled offences, Section 44(1)(c) which provides for transfer/committal of such offences to Special Courts, and Section 71 which gives the PMLA an overriding effect and held that the PMLA Special Court was competent to try the scheduled offence even though it was not the notified court for the underlying offence, and dismissed the petition.

CBI v. Assistant Director, Directorate of Enforcement & Ors.

CONVICTION IN PREDICATE OFFENCE DOES NOT BAR CONTINUATION OF PMLA PROCEEDINGS; SUCH PROSECUTION DOES NOT AMOUNT TO DOUBLE JEOPARDY

The ***Karnataka High Court*** dismissed petitions seeking to quashing of proceedings under PMLA, on the ground that that continuing the PMLA prosecution after the Petitioners' conviction in the predicate offence amounted to double jeopardy. The Court relying on judgments in the case of *C. Anandane v. Directorate of Enforcement, Government of India, 2023 SCC OnLine Mad 7479* and *Hari Shankar Gurjar v. Directorate of Enforcement, 2023 SCC OnLine MP 816* observed that ingredients constituting offence under section 3 of PMLA are wholly distinct from the scheduled offence. The two offences, though interconnected, are legally distinct and cannot be subsumed within one another. The court held that Section 300 of the CrPC bars only a second trial for the same offence arising from the same facts, and that transplanting this doctrine into PMLA proceedings, which creates a distinct statutory offence, would stretch the provision beyond its legislative contours and dismissed the petition.

Dilip & Ors. v. Assistant Director, Directorate of Enforcement

PREVENTION OF CORRUPTION ACT

MERE CHANGE OF OPINION BY THE SANCTIONING AUTHORITY, ON THE SAME MATERIAL, VITIATES SANCTION

The ***Supreme Court*** held that an order denying sanction under the Prevention of Corruption Act, 1988 cannot be subjected to review on the very same material. In the instant case, sanction was initially refused by the Chief Secretary of Rajasthan, however, it was later granted after the Joint Secretary of the Chief Minister referred the matter back for reconsideration.

Relying on *State of H.P. v. Nishant Sareen*, *(2010) 14 SCC 527*, *Gopikant Choudhary v. State of Bihar, (2000) 9 SCC 53* and *State of Punjab v. Mohd. Iqbal Bhatti, (2009) 17 SCC 92*, the Court held that Section 19 of the PC Act contains no express provision for review of a sanction decision once exercised, and that while an implied power of review may exist, it cannot be invoked on a mere change of opinion over identical material; a review is permissible only where fresh material is placed before the authority and properly applied to.

State of Rajasthan and Others v. Dev Kant Meena

BHARATIYA NAGARIK SURAKSHA SANHITA

NON-SUPPLY OF CHARGE SHEET COPIES DOES NOT CONFER A RIGHT TO DEFAULT BAIL

The ***Supreme Court*** held that an accused cannot claim default bail merely because additional copies of the charge sheet were not filed or supplied within the statutory period. In the present case, it was the case of the Appellant/ Accused that under Section 193(8) of the BNS, the requirement to file copies of the chargesheet is mandatory in nature. The court held that right to default bail arises only when the charge sheet itself is not filed within the prescribed period and once a valid charge sheet is filed within stipulated timelines, the right to default bail stands extinguished. It was further observed that non-compliance with the requirement to file additional copies under Section 193(8) BNSS does not invalidate or vitiate the chargesheet.

Shaurya Sunil Kumar Singh v. Central Bureau of Investigation

COURTS CANNOT REWRITE CRPC TO CREATE A NEW STAGE IN CRIMINAL TRIALS

The ***Supreme Court*** held that the High Court, while exercising powers under Article 226, cannot introduce a new stage in a criminal trial which is not contemplated by the CrPC or BNSS. The challenge was limited to the arbitrary directions in High Court's order, as the sanction issue of examination before commencement of the trial, itself had become infructuous following the accused's acquittal. The State objected that these directions created a new procedure for criminal trials, extending beyond the CrPC and affecting trials generally. It set aside directions requiring trial courts to examine the sanctioning authority under Section 311 CrPC before framing charges in Prevention of Corruption Act cases. The Court clarified that Section 311, being a general provision, cannot be used to bypass the procedure prescribed for conducting trials or to create a separate pre charge stage.

State of Madhya Pradesh v. Ravi Shankar Singh & Ors

ARREST MEMO CANNOT BE TREATED AS GROUNDS OF ARREST

The ***Punjab and Haryana High Court*** granted bail to the Petitioner, who was arrested in connection with a case registered, inter alia, under the provisions of the NDPS Act, on the ground of non-compliance with the mandate under Article 22(1) of the Constitution of India and Section 52(1) of the NDPS Act, which require the grounds of arrest to be communicated to the arrested person. Notably, the material on record, including the arrest memo and the intimation memo, did not indicate that the grounds of arrest had been communicated to the Petitioner. The Court observed that grounds of arrest are legally distinct from an arrest memo. Mere preparation or service of an arrest memo cannot be construed as compliance with the constitutional mandate requiring communication of the grounds of arrest.

Amritpal Kaur @ Amrit Kaur v. State of Punjab

CONTINUED DETENTION DESPITE A RELEASE ORDER AMOUNTS TO ILLEGAL DETENTION

The ***Supreme Court*** held that once parole had been granted and sureties are produced to the satisfaction of the concerned court, the non-release of detenu amounts to illegal detention. In the present case, the Appellant was directed to be released on parole via order dated November 5, 2024, however, he was not released despite having complied with the conditions. It was the case of the prosecution that it was in process of challenging the release order as it was erroneous and against the rules.

The Appellant in the present case remained in custody for 24 days despite having been granted permanent parole and completion of surety verification. The Supreme Court held that once the detenue has been ordered to be released, the same has to be followed unless a superior court has granted stay in the matter. That the liberty of an individual is not a trivial matter and State cannot continue curtailing the same on account of its slow bureaucratic processes of taking decisions whether to file appeals. The Court further observed that if such a view is agreed to, it would amount to the liberty of a person being placed sub-par to the administrative decision of whether or not to file an appeal.

Daudayal v. State of Rajasthan & Ors.

BHARATIYA NYAYA SANHITA

CRIMINAL ANTECEDENTS ALONE INSUFFICIENT FOR INVOKING SECTION 111 (ORGANIZED CRIME)

The ***Madhya Pradesh High Court***, while considering a bail application, held that mere criminal antecedents cannot, by themselves, justify invoking Section 111 (organised crime) of the Bharatiya Nyaya Sanhita, 2023 ("**BNS**").

The prosecution alleged that the Applicant, along with co-accused Mujju and Chetan, intercepted and assaulted the complainant, during which Chetan fired a gunshot that hit the complainant's abdomen. Crime No. 322 of 2024 was initially registered under Sections 109(1), 115(2) read with Section 3(5) BNS, however, subsequently, Section 111 added on the ground that the accused persons had criminal antecedents. Relying on *State of Maharashtra v. Shiva @ Shivaji Ramji Sonawane*, (2015) 14 SCC 272 and *State of Gujarat v. Sandip Omprakash Gupta*, (2024) 14 SCC 401, the Court held that Section 111 requires prima facie proof of "continuing unlawful activity" coupled with violence, threat, intimidation or coercion to obtain pecuniary or other undue advantage. Criminal antecedents alone are insufficient. As the above ingredients were not prima facie established, and noting that the complainant had turned hostile, the Applicant was released on bail.

Tanmay v. State of Madhya Pradesh

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:

Priyamvada Singhania, Sneha Barange, Parag Kabra, Shreedhar Joshi, Aishwarya Pawar and Srishti Srivastav.