VAISH ASSOCIATES
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CORPORATE, TAX AND BUSINESS ADVISORY LAW FIRM

# THE CRIME TIMES

## NEWSLETTER - AUGUST 2026 EDITION

## IN THIS ISSUE

VAISH ASSOCIATES ADVOCATES
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CORPORATE, TAX AND BUSINESS ADVISORY LAW FIRM

# FROM THE EDITOR'S DESK

Dear Readers,

This issue examines a consistent judicial theme in contemporary criminal law: coercive powers must be exercised strictly within statutory and constitutional limits.

The Delhi High Court has clarified that Look Out Circulars cannot be used as instruments of debt recovery. Mere loan default or financial distress, without allegations of fraud or serious economic wrongdoing, cannot justify restricting the fundamental right to travel abroad.

Similarly, the Supreme Court has cautioned against continuing criminal proceedings arising from a predominantly commercial dispute after a settlement has been fully implemented and recognised by the Debt Recovery Tribunal. Such prosecution may, depending on the facts, amount to an abuse of process.

The courts have also reinforced essential procedural safeguards. Foreign documents received through official channels must still be proved in accordance with law, and the accused must be permitted to inspect and challenge them. Under Section 223 of the BNSS, an opportunity of hearing before cognizance is taken has been recognised as a substantive safeguard, including in applicable PMLA proceedings.

Finally, provisional attachment under the PMLA cannot rest upon a mechanical reproduction of statutory language. "Reason to believe" must reflect independent application of mind supported by objective material.

These decisions strengthen criminal enforcement by ensuring that it remains lawful, fair and accountable.

We hope this issue proves useful to our readers in understanding the evolving contours of criminal jurisprudence in India. As always, we welcome your feedback and suggestions.

With Regards,

Vijay Pal Dalmia
Editor-in-Chief

Mobile: +91 9810081079
Email: vpdalmia@vaishlaw.com

## PRINCIPLES GOVERNING LOOK OUT CIRCULARS (LOC)


In **Ritu Singal v. Bureau of Immigration & Ors.**, *2026:DHC:3806*, the Delhi High Court delivered an important and comprehensive judgment delineating the scope, limits, and constitutional validity of Look Out Circulars ("LOCs"), holding that mere default in repayment of loans or financial liabilities cannot justify curtailment of the fundamental right to travel abroad under Article 21 of the Constitution of India.

The Court emphatically reiterated that LOCs cannot be permitted to operate as coercive debt recovery mechanisms at the instance of banks and financial institutions, particularly in cases where no criminal proceedings involving fraud, siphoning of funds, diversion of money, or serious economic offences are pending.

The batch of petitions before the Court involved challenges to LOCs issued at the request of banks, financial institutions, and investigating agencies against borrowers, guarantors, and directors of companies facing financial stress or loan defaults. Several petitioners contended that despite the disputes being essentially civil and commercial in nature, LOCs had been opened mechanically, thereby preventing them from travelling abroad and seriously affecting their personal liberty, professional engagements, and business activities.

The Court undertook a detailed examination of the Office Memoranda issued by the Ministry of Home Affairs governing issuance of LOCs and analysed the constitutional implications of restricting an individual's right to travel abroad. Reaffirming that the right to travel internationally forms an integral part of personal liberty under Article 21, the Court held that any restriction upon such right must satisfy the tests of legality, necessity, fairness, proportionality, and procedural reasonableness.

The Court clarified that mere inability to repay loans, financial distress, or business failure cannot by themselves be elevated to matters affecting the "economic interests of India" so as to justify issuance of LOCs.

In a significant observation, the Court held:

> *"Mere inability to repay a debt, without there being a criminal case, cannot be a reason to deprive a citizen of the fundamental rights guaranteed under Article 21."*

The Court further cautioned against an expansive interpretation of the expression "detrimental to the economic interests of India" appearing in the governing Office Memoranda. It observed that the phrase cannot be invoked mechanically in every loan default case and must be confined to situations involving grave economic offences such as fraud, siphoning of public funds, diversion of monies, money laundering, wilful economic deception, or activities seriously threatening the country's financial system.

Importantly, the Court noted that in several matters before it, no criminal case was pending against the petitioners and no allegations of of fraud or siphoning of funds had been made out. In many cases, banks had already initiated recovery proceedings under the SARFAESI Act, the Recovery of Debts and Bankruptcy Act, or the Insolvency and Bankruptcy Code. The Court held that once statutory recovery mechanisms are available and are being pursued, LOCs cannot additionally be used as instruments of coercion or pressure for recovery of debts.

The Court strongly deprecated the growing tendency of banks and financial institutions to seek LOCs routinely against borrowers and guarantors merely because substantial dues remained unpaid. It observed that LOCs have severe consequences, including restrictions and interference with professional and personal affairs, and therefore cannot be issued mechanically or on the basis of vague apprehensions.

The Court, after undertaking a detailed analysis of the statutory framework and judicial precedents governing LOCs, crystallised the governing principles as follows:

1. **The right to travel abroad is an intrinsic facet of personal liberty under Article 21 of the Constitution,** and any restriction upon such right must satisfy constitutional standards of legality, fairness, necessity, and proportionality.
2. **LOCs are coercive measures of last resort and cannot be used routinely for law enforcement or debt recovery.** It may be invoked only in cases involving cognizable offences where the accused is deliberately evading arrest or failing to appear despite coercive measures, and there exists a real likelihood of absconding.
3. Public sector banks, through their Chairmen, Managing Directors, or Chief Executive Officers, do not possess legal authority to seek the opening of an LOC.
4. **Mere inability to repay a debt, absent any criminal case, cannot justify deprivation of the fundamental rights guaranteed under Article 21.** An LOC cannot be issued routinely in cases of loan default, particularly where the individual is not accused of misappropriation or siphoning of funds.
5. **The expression "detrimental to the economic interests of India" must receive a strict and narrow construction** and be invoked only in rare cases involving a clear and serious threat to national economic interests, and not for routine commercial defaults or business failures. The quantum of the alleged default and the nature of the loss must be assessed to determine whether it genuinely imperils the national economic interest.
6. **The authority charged with opening an LOC must apply its mind independently and cannot act as a mere instrument of the originating agency.** There must be a speaking order, based on specific and credible inputs, justifying the necessity of the restraint. A mechanical or pro forma compliance with the originating authority's request cannot satisfy this requirement.

7. **An LOC cannot be issued merely because a person is a director, guarantor, shareholder, or relative of a defaulting borrower,** absent specific material showing his direct involvement in the alleged wrongdoing, since liability is personal and not vicarious.

8. **An LOC cannot continue indefinitely and must be reviewed periodically.** Where the person has cooperated with the investigation, has not evaded process, and no further interrogation or presence is required, continuation of the LOC becomes an unjustified restriction on personal liberty.

9. **Although writ jurisdiction remains available to challenge LOCs, affected persons may also approach the originating agency or the jurisdictional court seeking rescission, modification, or suspension of the LOC.** However, where such remedies are ineffective, constitutional courts remain duty bound to exercise judicial scrutiny.

10. **The burden of justifying the legality, proportionality, and necessity of an LOC lies squarely upon the originating agency.** Courts cannot accept generalized assertions relating to economic interests or security concerns without credible supporting material.

After laying down the governing principles, the Court proceeded to classify the petitions into three broad categories.

The **first category** comprised matters where LOCs had been opened primarily at the instance of banks and financial institutions in relation to loan defaults and recovery proceedings, without any criminal case or investigation pending against the petitioners. The Court found that these disputes were essentially civil and commercial in nature and that LOCs were being used as coercive mechanisms for debt recovery. Holding that mere financial default cannot justify deprivation of the right to travel abroad, the Court quashed the LOCs in such matters.

The **second category** consisted of cases where LOCs had been opened primarily at the instance of investigating agencies and ministries and criminal investigations were pending, but the petitioners had cooperated with the investigating authorities and had previously travelled abroad and returned to India without violating any conditions or attempting to evade the process of law. The Court considered such conduct indicative of bona fides and held that mere apprehension of absconding, unsupported by cogent material, cannot justify indefinite continuation of LOCs. In several such matters, relief was granted by suspending or setting aside the LOCs subject to conditions.

The **third category** involved cases where the nature of allegations, factual disputes, or stage of investigation required examination by the jurisdictional trial court or investigating authority. In such matters, instead of directly interfering with the LOCs, the High Court relegated the petitioners to approach the competent court or authority for appropriate relief including modification, suspension, or rescission of the LOCs.

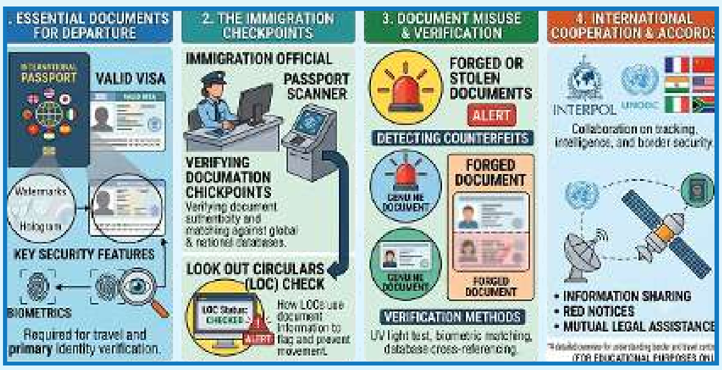
A particularly important aspect of the judgment is the Court's repeated emphasis on proportionality and procedural fairness. The

The Court observed that the existence of financial exposure or pendency of recovery proceedings cannot automatically lead to a presumption that a person intends to flee from justice. The Court cautioned that constitutional rights cannot be curtailed merely because substantial monetary claims are involved.

Ultimately, the Court held that LOCs cannot be sustained merely on the ipse dixit of banks or financial institutions and that constitutional courts are duty bound to subject such restrictions to rigorous judicial scrutiny.

The judgment serves as a significant reaffirmation that personal liberty under Article 21 cannot be subordinated to private debt recovery efforts. While banks and investigating agencies may invoke LOCs in exceptional circumstances involving demonstrable fraud, deliberate evasion, or grave economic offences affecting national interest, mere loan default or financial distress, without more, cannot furnish lawful justification for restraining an individual's right to travel abroad.

## FOREIGN DOCUMENTS NOT AUTOMATICALLY ADMISSIBLE MERELY BECAUSE THEY ARE RECEIVED THROUGH OFFICIAL CHANNELS




In **Ritu Butalia v. State**, *2026:DHC:2057*, the Delhi High Court held that an accused is entitled to inspect original foreign documents relied upon by the prosecution where such inspection is necessary for effective cross-examination and to challenge the admissibility of those documents. The Court reiterated that the right to a fair trial includes a meaningful opportunity to test the authenticity and evidentiary value of prosecution evidence.

The case arose from prosecutions under Sections 276C(1) and 277 of the Income Tax Act, 1961 read with Section 191 of the Indian Penal Code, 1860, alleging concealment of foreign assets and false verification in income tax proceedings. The prosecution relied upon various documents received from authorities in the British Virgin Islands and Singapore concerning the petitioner's alleged interests in offshore entities and foreign bank accounts.

During the pre-charge stage, the prosecution exhibited the documents after recording them as "OSR" (Original Seen and Returned). Upon examining the copies placed on record, the petitioner noticed that the documents did not appear to contain the diplomatic authentication or certification ordinarily required for proving foreign public documents under Indian law. Accordingly, she sought production of the originals for inspection during the cross-examination of the prosecution witness.

The Trial Court rejected the application on the ground that issues concerning admissibility would be considered at a later stage and that the request appeared to be intended to delay the proceedings. Aggrieved thereby, the petitioner approached the Delhi High Court.

Before the High Court, the petitioner contended that effective cross-examination was impossible without inspecting the original documents, particularly when the prosecution sought to rely upon them as foundational evidence. It was argued that the defence was entitled to verify whether the originals satisfied the requirements of Section 78(6) of the Indian Evidence Act, 1872 governing proof of foreign public documents.

Examining the statutory framework, the Court noted that Section 78(6) of the Evidence Act prescribes the manner in which foreign public documents are to be proved and that Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 recognises certain acts performed by Indian diplomatic and consular officers abroad. **The Court observed that although the documents had been received through official governmental channels, such transmission by itself did not dispense with the requirement of proving the documents in accordance with law.**

Significantly, the Court noted that the Trial Court itself had recorded "Original Seen and Returned" while exhibiting the documents. Once the prosecution had relied upon the originals, the accused could not be denied an opportunity to inspect them when challenging their authenticity and admissibility.

Emphasising the importance of a fair trial, the Court observed as under:

> *If the petitioner is not allowed to inspect the original documents, she would be deprived of her right to verify whether the documents satisfy the requirements of Section 78(6) of the Indian Evidence Act, 1872 and Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948. Such denial would seriously prejudice her right to effectively cross-examine the witness and defend herself in the prosecution."*

The Court held that where foreign documents form the basis of the prosecution case, the accused must be afforded a meaningful opportunity to inspect the originals and challenge their admissibility in accordance with law. It further observed that mere exhibition of a document does not automatically establish its admissibility or proof, and the defence cannot be deprived of the opportunity to contest the same during cross-examination.

While setting aside the Trial Court's order, the High Court held that procedural rights essential to a fair defence cannot be curtailed merely on apprehensions of delay. Accordingly, the Court directed the Income Tax Department to produce the original foreign documents for inspection by the petitioner in the presence of the Magistrate and permitted cross-examination to proceed thereafter. The costs imposed by the Trial Court were also set aside.

The judgment clarifies that even where documents are received through official governmental channels, their admissibility and proof remain open to challenge in accordance with the Evidence Act.

# CRIMINAL PROSECUTION AFTER SETTLEMENT OF BANK LOAN DISPUTE HELD UNSUSTAINABLE: SUPREME COURT QUASHES CHEATING AND FORGERY CASE


In **Vijay Kumar Kela & Anr. v. Central Bureau of Investigation & Anr.**, *2026 INSC 588*, the Supreme Court set aside criminal proceedings initiated by the Central Bureau of Investigation (CBI) against borrowers after a loan dispute had already been resolved through a compromise settlement approved by the Debt Recovery Tribunal (DRT). The Court held that continuation of criminal prosecution in the peculiar facts of the case would amount to an abuse of the process of law and would undermine the sanctity of settlements arrived at in commercial disputes.

The case arose out of credit facilities granted by the bank to the appellants. Following default in repayment, the bank instituted recovery proceedings before the DRT. During the pendency of those proceedings, the parties entered into a negotiated compromise settlement which was approved by the competent authority of the bank. A joint application was thereafter filed before the DRT recording the settlement. Pursuant thereto, the appellants paid the entire settlement amount, the bank issued a "No Dues Certificate", and the DRT disposed of the recovery proceedings after recording full satisfaction of the bank's claim.

However, more than two years after the settlement had been fully implemented and the DRT proceedings stood concluded, the bank lodged a complaint with the CBI alleging fraud, forgery, and other offences in relation to the very loan transaction under Sections 420 and 471 of Indian Penal Code (IPC). Based on the complaint, a criminal case was registered, a chargesheet was filed, and charges were framed against the appellants. The appellants filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) before the High Court for quashing of the chargesheet as well as the order passed by the Special Judicial Magistrate framing charges.

Aggrieved by the order of the High Court and continuation of the criminal proceedings, the appellants approached the Supreme Court contending that the dispute arose out of a commercial banking transaction which had already been amicably resolved and judicially recognised by the DRT. It was argued that permitting criminal prosecution to continue after the bank had accepted the settlement amount, issued a no-dues certificate, and withdrawn its recovery proceedings would be wholly unjust and oppressive.

The Supreme Court undertook a detailed examination of its earlier decisions dealing with the interplay between settlement of commercial disputes and criminal prosecutions. The Court referred to precedents including **Nikhil Merchant v. CBI** *((2008) 9 SCC 677),*

**Gian Singh v. State of Punjab** *((2012) 10 SCC 303)*, **Narinder Singh v. State of Punjab** (*(2014) 6 SCC 466)*, and **K. Bharthi Devi v. State of Telangana** *((2024) 10 SCC 384)*, wherein it was recognised that criminal proceedings having an overwhelmingly civil or commercial flavour may be quashed where the underlying dispute has been fully resolved and the continuation of prosecution would serve no meaningful purpose.

Applying those principles, the Court noted that the compromise settlement in the present case was not a private arrangement but one that had been formally placed before and recognised by the DRT. The appellants had complied with all settlement obligations, the bank had accepted the settlement amount, issued a no dues certificate, and the recovery proceedings were withdrawn on that basis.

A significant factor that weighed with the Court was the conduct of the bank itself. The Court noted that the bank had stated in its complaint that fraud was suspected as early as 2013. Despite such alleged suspicion, no criminal proceedings were initiated at that stage. Instead, the bank chose to pursue recovery proceedings, entered into a compromise settlement, accepted the settlement amount in full and final satisfaction of its claim, and only thereafter sought to initiate criminal prosecution. The Court found such conduct difficult to reconcile with the allegations subsequently made against the appellants.

The Court further observed that the compromise settlement itself contained clauses indicating that the bank had not found any irregularity in the loan documentation and had certified that the settlement was in conformity with applicable RBI guidelines. In these circumstances, the subsequent allegation that the loan transaction was tainted by fraud appeared inconsistent with the bank's own earlier position.

While examining the effect of the settlement, the Supreme Court made a significant observation regarding the bona fides of the bank's actions. The Court held:

> *"We are afraid, such conduct of the respondent- Bank betrays lack of good faith. If the Bank had suspected fraud in 2013 itself, it should have lodged complaint at that stage itself. However, such stand of the Bank that fraud was committed by appellant No. 1 is not supported by the contents of the compromise settlement itself. We have already noted that in clause 9.1.9 of the compromise settlement, it was clearly mentioned by the Bank that there were no lapses in documentation or any irregularity was observed in the cash credit proposal of the appellants as per legal audit dated 12.02.2009. Additionally, the Bank certified in clause 25 that the compromise amount was in terms of the RBI policy guidelines and that it was not lower than the distress sale value of the securities available*_**. After entering into a compromise settlement with the appellants wherein it was clearly stated that there was no tampering of any of the documents and after filing joint application before the DRT to record compromise settlement, it was not**_

*proper on the part of the respondent-Bank to belatedly initiate criminal proceedings against the appellants, that too, after withdrawing the proceedings from the DRT on execution of the compromise settlement leading to closure of the loan account. Such a criminal proceeding in our view would not only be oppressive qua the appellants but would also amount to an abuse of the process of the court.”*

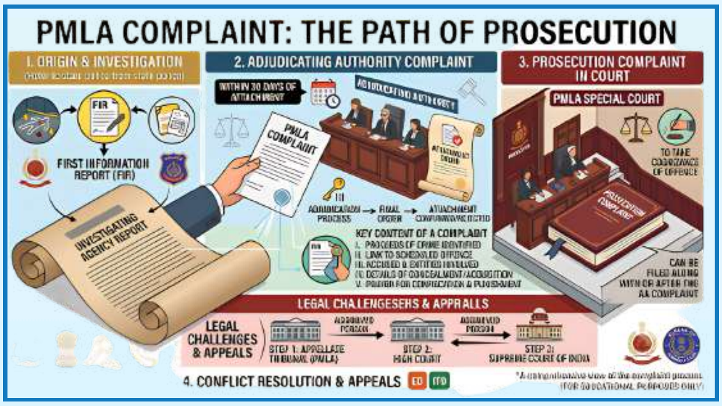
The Court also emphasised that the dispute emanated from a banking transaction which was essentially commercial in nature and possessed an overwhelmingly civil flavour. Once the dispute had been resolved through a duly approved settlement and the loan account had been closed, the possibility of securing a conviction became remote and bleak. In such circumstances, continuation of criminal proceedings would result in grave prejudice and injustice to the accused.

Importantly, the Court cautioned against permitting criminal prosecutions to be initiated after parties have resolved their disputes through settlements recognised by judicial forums. The Court observed that allowing such prosecutions to continue would undermine confidence in settlement mechanisms and discourage parties from resolving commercial disputes through negotiated settlements. The Court noted that if settlements approved by forums such as the DRT do not bring finality to disputes, commercial entities may become reluctant to enter into such arrangements, which would ultimately have an adverse impact on thre broader economic and commercial environment.

Taking note of the peculiar facts of the case, the Supreme Court concluded that the continuation of criminal proceedings was unsustainable. Accordingly, it set aside the order of the High Court, quashed the chargesheet filed by the CBI, and also quashed the order framing charges against the appellants.

The judgment reaffirms that where a banking dispute is predominantly civil and commercial in nature, has been fully resolved through a compromise settlement approved by the DRT, and the lender itself has accepted the settlement and issued a no dues certificate, subsequent criminal prosecution based on the same transaction may, in appropriate cases, constitute an abuse of process. The decision also underscores the importance of preserving the sanctity and finality of settlements in commercial disputes, particularly where such settlements have received judicial recognition.

## SECTION 223 BNSS APPLIES EVEN TO PRE-BNSS PMLA COMPLAINTS WHERE COGNIZANCE IS TAKEN POST-BNSS; HEARING BEFORE TAKING COGNIZANCE MANDATORY: SUPREME COURT



In **Parvinder Singh vs. Directorate of Enforcement,** *2026 INSC 519*, the Supreme Court delivered an important ruling clarifying the scope and effect of the first proviso to Section 223(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), **holding that an accused must be afforded an opportunity of hearing before cognizance is taken on a complaint and that non-compliance with such requirement renders the proceedings void ab initio** even in money laundering matters.

The case arose out of proceedings under the Prevention of Money Laundering Act, 2002 ("PMLA"), where a complaint had been filed by the Enforcement Directorate before the Special Court prior to the commencement of the BNSS. However, cognizance of the complaint was taken after the BNSS came into force and without granting an opportunity of hearing to the accused.

The principal question before the Court was whether the first proviso to Section 223(1) of the BNSS, which mandates that no cognizance of an offence shall be taken on a complaint without giving the accused an opportunity of being heard, would apply to such proceedings and whether failure to comply with the requirement would invalidate the order taking cognizance.

At the outset, the Court examined the interplay between the procedural framework under the BNSS and proceedings under the PMLA. Reaffirming earlier decisions including **Tarsem Lal v. Enforcement Directorate** *((2024) 7 SCC 61)*, **Yash Tuteja v. Union of India** *((2024) 8 SCC 465)*, and **Kaushal Kumar Agarwal v. Directorate of Enforcement** *(2025 SCC OnLine SC 1221)*, the Court held that once a complaint under Section 44(1)(b) of the PMLA is filed, the procedural provisions governing complaint cases under the CrPC/BNSS continue to apply unless specifically excluded by the special enactment.

Accordingly, the Court held that Sections 223 to 228 of the BNSS apply to proceedings under the PMLA and there being no inconsistency between the two enactments, the safeguard introduced under Section 223(1) must be given full effect.

**Mandatory Nature of Opportunity of Hearing Under Section 223(1) BNSS**

The Court closely examined the language of the first proviso to Section 223(1) of the BNSS, which provides that no cognizance of an offence shall be taken by the Court without giving the accused an opportunity of being heard.

Rejecting the contention that the provision is merely procedural, **the Court held that the proviso confers a substantive right upon the accused and is an extension of the constitutional guarantee of fair trial under Article 21.**

In a significant observation, the Court held:

> *"The aforesaid proviso is substantive in nature, as it does not merely regulate the manner in which the proceedings are to be conducted, rather it confers a right upon the accused to be heard before taking cognizance which forms a part of the right of an accused to a fair trial enshrined under Article 21 of the Constitution of India."*

The Court further observed that the use of the word "**shall**" leaves no discretion with the Court and makes compliance mandatory.

Emphasising the consequence of non-compliance, the Court categorically held:

> *"Cognizance of an offence taken by a Court without due compliance of the aforestated proviso would be void ab initio."*

The Court therefore held that denial of hearing at the stage of cognizance is not a curable procedural irregularity but an illegality that goes to the root of jurisdiction.

**Applicability of BNSS to Complaints Filed Prior to Its Commencement**

A significant aspect of the judgment is the Court's clarification regarding the applicability of BNSS to complaints instituted before 01 July 2024 but in which cognizance was taken subsequently.

The prosecution argued that by virtue of the savings clause under Section 531(2)(a) of the BNSS, once the complaint had been filed prior to the commencement of the BNSS, the proceedings would continue under the CrPC and the newly introduced safeguard under Section 223(1) would not apply.

Rejecting this contention, the Court held that Section 531 is intended to preserve continuity of proceedings already underway and prevent piecemeal application of procedural laws. However, such protection applies only where an appeal, inquiry, investigation, application, or trial had actually commenced prior to the enforcement of the BNSS.

The Court clarified that substantive procedural safeguards introduced under the BNSS would continue to apply where judicial proceedings had not reached the stage of inquiry before commencement of the new law.

**Scope of "Inquiry" Under Section 531 BNSS**

The Court undertook a detailed analysis of the meaning of the expression "inquiry" and drew a distinction between filing of a complaint and commencement of judicial inquiry.

Interpreting Section 2(1)(k) of the BNSS and relying upon **Hardeep Singh v. State of Punjab** *((2014) 3 SCC 92)*, the Court held that a mere ministerial act such as numbering a complaint, registering it, or posting it before the Court cannot amount to commencement of inquiry.

The Court observed:

> *"A mere ministerial act cannot be termed as an 'inquiry'… Taking cognizance is nothing but an application of judicial mind."*

The Court held that **inquiry begins only when the Court applies its judicial mind to the allegations and undertakes examination in accordance with law**. Administrative or preparatory acts intended to place the matter before the Court cannot amount to commencement of inquiry.

Applying this principle, the Court noted that although the complaint had been filed before commencement of the BNSS, but cognizance was admittedly taken after the BNSS came into force, the mandatory requirement under Section 223(1) became applicable.

The Court therefore rejected the argument that filing of the complaint itself insulated the proceedings from operation of the BNSS.

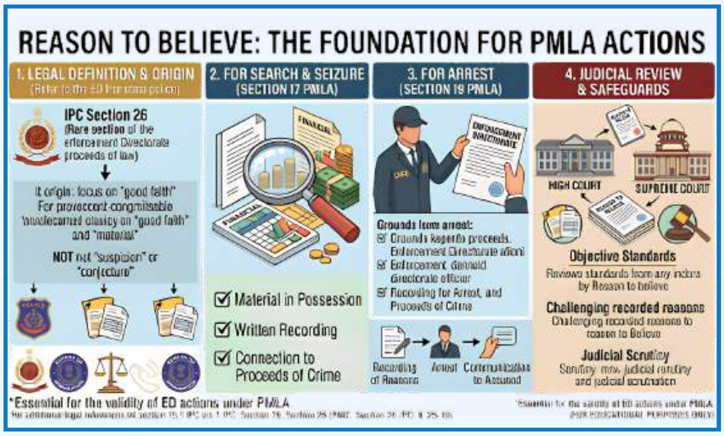
The Court further held that where a statute confers a substantive right affecting personal liberty, denial of such right itself constitutes prejudice and no additional burden can be cast upon the accused to demonstrate actual injustice.

**Conclusion**

Accordingly, the Supreme Court set aside the order taking cognizance as well as the judgment under challenge and directed the Special Court to reconsider the complaint afresh after granting an opportunity of hearing to the accused.

The judgment marks an important development under the BNSS by recognising that the right of hearing before cognizance in complaint cases even in PMLA matters is a substantive safeguard and not a procedural formality. It further clarifies that for determining applicability of the BNSS, the relevant consideration is not merely the filing of the complaint but whether judicial inquiry had commenced before the new law came into force. Where cognizance is taken post-BNSS, the statutory right under Section 223(1) cannot be bypassed merely because the complaint was instituted earlier.

## MERE REPRODUCTION OF STATUTORY LANGUAGE DOES NOT CONSTITUTE "REASON TO BELIEVE" UNDER PMLA; WRIT MAINTAINABLE DESPITE ALTERNATE REMEDY




In **Jayamma v. Directorate of Enforcement**, *2026:KHC:25829*, the Karnataka High Court set aside a provisional attachment order issued under Section 5(1) of the Prevention of Money Laundering Act, 2002 ("PMLA"), holding that mere reproduction of the statutory language contained in the Second Proviso to Section 5(1) cannot substitute the mandatory requirement of recording an independent and reasoned "belief" based on objective material. The Court further held that a writ petition challenging the very jurisdictional foundation of the attachment is maintainable notwithstanding proceedings before the Adjudicating Authority under Section 8 of the PMLA or the availability of a statutory appellate remedy.

The case arose from a provisional attachment order passed by the Enforcement Directorate ("ED") in relation to certain immovable properties alleged to constitute proceeds of crime. The attachment was invoked under the Second Proviso to Section 5(1) of the PMLA, which permits provisional attachment even before filing of a police report or complaint relating to the scheduled offence, provided the competent authority records reasons to believe that immediate attachment is necessary and that non-attachment is likely to frustrate proceedings under the Act.

**Maintainability of Writ Petition Despite Availability of Statutory Appeal**

Before examining the validity of the attachment order, the High Court dealt with the preliminary objection raised by the ED regarding maintainability of the writ petition. The ED contended that since the provisional attachment order had already been confirmed by the Adjudicating Authority under Section 8 of the PMLA, the petitioner ought to pursue the statutory appellate remedy available under the Act and that the writ petition was therefore not maintainable.

Rejecting the objection, the Court held that the challenge raised by the petitioner went to the very jurisdiction of the authority to invoke the Second Proviso to Section 5(1) of the PMLA. The Court observed that the issue whether the mandatory jurisdictional requirements contained in the Second Proviso had been satisfied is not a matter that falls within the scope of adjudication before the Adjudicating Authority under Section 8 of the Act. **The role of the Adjudicating Authority is principally confined to examining whether the attached property constitutes proceeds of crime and whether the attachment deserves confirmation. The Authority is not empowered to adjudicate upon the validity of the "reason to believe" recorded for invoking the exceptional power contained in the Second Proviso to Section 5(1).**

The Court relied upon the decision of the Supreme Court in **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors.,** *(1998) 8 SCC 1,* wherein the Supreme Court carved out well-recognised exceptions to the rule of alternate remedy and held that a writ petition would be maintainable, inter alia, where the impugned action or order is wholly without jurisdiction. Applying the said principle, the Court held that non-compliance with the jurisdictional conditions prescribed under the Second Proviso to Section 5(1) of the Act strikes at the very foundation of the authority's power to order provisional attachment. Since the challenge pertained to the legality of the assumption of jurisdiction itself, the case fell within the recognised exceptions to the rule of alternate remedy, rendering the writ petition maintainable notwithstanding the statutory appellate mechanism available under the PMLA.

**Compliance with the Conditions Under the Second Proviso to Section 5(1): A Jurisdictional Prerequisite**

Turning to the merits, the Court undertook a detailed examination of the statutory scheme under Section 5 of the PMLA. Under Section 5(1), the Director or any other authorised officer may provisionally attach property for a period not exceeding 180 days if he has reason to believe, on the basis of material in his possession, that such property constitutes proceeds of crime and is likely to be concealed, transferred, or dealt with in a manner which may frustrate confiscation proceedings under the Act.

Ordinarily, such power can be exercised only after a report under Section 173 of the Code of Criminal Procedure or a complaint in respect of the scheduled offence has been forwarded to the competent court. However, the Second Proviso to Section 5(1) carves out an exception and permits provisional attachment even before filing of such report or complaint. Since the provision confers an extraordinary power, the legislature has imposed an additional safeguard requiring the authorised officer to record reasons in writing showing that immediate attachment is necessary and that failure to do so is likely to frustrate proceedings under the Act.

Examining the provisional attachment order, the Court noted that while the authority had elaborately discussed the alleged offence of money laundering and the nature of the purported proceeds of crime, **it had failed to record any meaningful reasons demonstrating why immediate attachment was necessary or how non-attachment would frustrate proceedings under the Act.**

The Court found that the relevant portion of the attachment order merely stated that if the properties were not attached, proceedings under the Act may be frustrated and that the proceeds of crime could be further laundered, affecting the financial system and economy. However, apart from reproducing the language of the statute, no objective material was identified to support such conclusions.

In a significant observation, the Court held:

> ***"In the guise of adherence to law mere copy-paste of statutory language to indicate compliance would not be sufficient."***

The Court further observed:

> *"There must be application of mind to the particular facts to demonstrate that material in possession would indicate the failure of passing an order for provisional attachment would likely frustrate the proceedings under the PMLA."*

The Court emphasised that there must be a demonstrable application of mind to the specific facts of the case and the material available with the authority. **The existence of material suggesting commission of the offence of money laundering is not, by itself, sufficient to invoke the Second Proviso.** The authority must separately identify material showing that immediate attachment is necessary because failure to attach the property would likely frustrate proceedings under the PMLA.

Drawing a clear distinction between the two statutory requirements, the Court held that material establishing a prima facie case of money laundering is fundamentally different from material required to justify immediate attachment of property. **The latter must specifically demonstrate a real likelihood that the property may be concealed, transferred, dissipated, encumbered, or otherwise dealt with in a manner that would frustrate proceedings under the Act.**

<u>On the facts of the case, the Court noted that the properties in question could not even be effectively transferred at the relevant point of time because mutation entries had not been</u>

effected. Consequently, there was no objective basis to conclude that the petitioner was in a position to create third-party rights or otherwise deal with the properties so as to frustrate proceedings under the PMLA.

The Court observed that the apprehension expressed by the ED was unsupported by any material having a nexus with the statutory requirement under the Second Proviso. Mere suspicion, conjecture, or speculative concerns could not substitute the mandatory requirement of recording a legally sustainable "reason to believe".

The Court further held that adherence to the procedure prescribed under the Second Proviso to Section 5(1) of the PMLA is mandatory and any deviation would vitiate the attachment order itself.

Rejecting the contention that subsequent confirmation proceedings before the Adjudicating Authority would cure the defect, the Court held that if the foundational provisional attachment order is legally unsustainable, all consequential proceedings founded upon such order must necessarily fail.

Accordingly, the High Court set aside the provisional attachment order as well as all consequential proceedings arising therefrom, while reserving liberty to the Enforcement Directorate to initiate fresh proceedings in accordance with law if the statutory requirements contained in the Second Proviso to Section 5(1) are duly satisfied.

The judgment reaffirms that the extraordinary power of provisional attachment under the PMLA cannot be exercised mechanically. It underscores that the requirement of "reason to believe" under Section 5 is a substantive jurisdictional safeguard and not a mere reproduction of statutory language. The Court further clarifies that non-compliance with the mandatory requirements of Section 5 strikes at the very assumption of jurisdiction, thereby justifying the exercise of writ jurisdiction notwithstanding the availability of an alternative statutory remedy. Mere reiteration of statutory phrases, without objective material and independent application of mind, is insufficient to sustain such a drastic exercise of power.

# CONNECT WITH US

**Editor in Chief**: Vijay Pal Dalmia, Senior Partner ( vpdalmia@vaishlaw.com )

**Editorial Team:** Rajat Jain, Associate Partner, Aditya Dhar, Associate Partner
Ankush Mangal, Associate

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**DELHI**

1st, 9th & 11th Floor,
Mohan Dev Building,
13, Tolstoy Marg,
New Delhi - 110001, India,
Tel: +91 11 42492525,
delhi@vaishlaw.com

**MUMBAI**

106, Peninsula Centre,
Dr. S. S. Rao Road, Parel,
Mumbai - 400012, India,
Tel: +91 22 42134101,
mumbai@vaishlaw.com

**BENGALURU**

Bhive Premium
Ramanashree
(MG Road) No. 2/1, Brunton Road,
Off MG Road Opposite
Old Passport Office
Bengaluru - 560001, India
Tel: +91 80409 03588/ 89
bangalore@vaishlaw.com