

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.1184/2021

Muhammad Rafique

vs.

Director General, Federal Investigation Agency, Islamabad

and

W.P. No.1778 /2021

Khalid Mehmood

vs.

Director General, Federal Investigation Agency, Islamabad & another

Petitioners by: Ms. Aaliya Zareen Abbasi and Mr. Tariq Bilal,
Advocates for petitioners in their respective petitions

Respondents by: Barrister Muhammad Mumtaz Ali, AAG.
Mr. Faisal Bin Khurshid, Advocate for IESCO.
Mr. Qaiser Masood, Additional Director (Law), FIA
HQ.
Malik Sajid Mehmood, Assistant Director,
FIA/ ACC, Islamabad.

Date of Hearing: 21.12.2021.

MOHSIN AKHTAR KAYANI, J: By way of this common judgment, this

Court intends to decide the captioned writ petitions having involved similar facts and questions of law.

2. Through the captioned W.P. No.1184/2021, Muhammad Rafique (petitioner) seeks quashing of FIR No.51, dated 09.12.2020, under Section 4 of Anti-Money Laundering Act, 2010, P.S. FIA/ACC, Islamabad.

3. Similarly, through the captioned W.P. No.1778/2021, Khalid Mehmood (petitioner) prayed for quashing for FIR No.52, dated 09.12.2020, under Section 4 of Anti-Money Laundering Act, 2010, P.S. FIA/ACC, Islamabad.

4. Brief and consolidated facts are that both petitioners were employees of IESCO and have been involved in case FIR No.10, dated 02.08.2019, under Sections 420, 464, 468, 471, 473, 419, 409 and 109 PPC read with Section 5(2) of PCA, 1947 for allegedly clearing bills of IESCO using fake bank stamps and

embezzled huge sum of money, however both the petitioners were granted bail after arrest by this Court. Later on, the aforementioned FIR No.51/2020 and FIR No.52/2020 were lodged against the petitioners for acquiring assets through the embezzled amount referred in FIR No.10/2019. Hence, instant writ petitions.

5. Learned counsel for petitioners contended that the petitioners were already booked under FIR No.10/2019 and were behind the bars, therefore, registering another FIR about the same incident is unlawful and apparently amounts to abuse of process of law, even otherwise, the bare perusal of said FIRs reveals no offence against the petitioners; that the superior Courts have also rendered judgments on the inadequacy of availing the provisions of Sections 249-A and 265-k Cr.P.C. holding that where prima facie a matter is unjust, the Court under writ jurisdiction has ample powers to quash an FIR for protection of an innocent person.

6. Conversely, learned AAG as well as learned counsel for respondent stressed that instant writ petitions are not maintainable as petitioners instead of resorting to the learned trial Court / Special Court have directly invoked the writ jurisdiction for quashing the FIRs, as such, it has been held by the superior Courts in numerous pronouncements that the High Court cannot assume the role of investigator and cannot interfere with the lawful process of investigation.

7. Arguments heard, record perused.

8. Perusal of record reveals that both the petitioners namely Muhammad Rafique and Khalid Mehmood are Accounts Officer and Commercial Assistant of IESCO Sub-Division-I, Islamabad, respectively, who in connivance with each other allegedly prepared and posted bogus scrolls related to IESCO Consumer Bills using fake bank statements along with bill stubs with fake bank stamps of an amount of Rs.43 Million (approximately) in the month of June, 2019 only. They also got cleared and verified all those scrolls and reconciled the same with

the monthly bank statements with the help of other co-accused person Muhammad Naeem Ex-RO-I, IESCO Sub-Division-I, whereafter they got cleared and reconciled the bogus scrolls and fake bank statements, forwarded the same for posting it in the IESCO online system at Computer Section. The IESCO Departmental Inquiry Committee through their interim report concluded that a sum of Rs.207,752,411/- was embezzled for the period of July, 2018 to June, 2019. Resultantly, a loss has been caused to national ex-chequer by misusing of authority and criminal breach of trust, hence, FIR No.10, dated 02.08.2019, under Sections 420, 464, 468, 471, 473, 419, 409, 109 PPC read with Section 5(2) of PCA, 1947 was registered at P.S. FIA/ACC Islamabad.

9. The Investigating Officer submitted the final report under Section 173 Cr.P.C. on 10.02.2021 before the learned Special Judge (Central), Islamabad, however after submission of the *challan*, another inquiry was initiated, which culminated into registration of FIR No.51, dated 09.12.2020, under Section 4 of Anti-Money Laundering Act, 2010 (amended September, 2020), P.S. FIA/ACC, Islamabad and FIR No.52, dated 09.12.2020, under Section 4 of Anti-Money Laundering Act, 2010 (amended September, 2020), P.S. FIA/ACC, Islamabad have been registered against the petitioners, as such, the same have been assailed by the petitioners primarily on the ground that the second FIR has been registered with delay qua the same offence originating from previously registered FIR No.10/2019, per se, the facts referred in subsequent FIRs qua anti money laundering are based upon series of transactions already mentioned in earlier FIR No.10/2019.

10. In order to deal with the grounds raised by the petitioners in these petitions, it is necessary to dilate upon the contents of subsequent FIR No.51 and FIR No.52 of 2020 being subject matter of instant writ petitions, whereby the tentative scanning of allegations referred therein reveals that Muhammad Rafique (petitioner) while rendering his services as Accounts Assistant, IESCO,

acquired Plot No.2317, Sector I-12/1, Islamabad from the proceeds of crime by the commission of predicate offence under Anti-Money Laundering Act, 2010 mentioned in FIR No.10/2019 i.e. the amount embezzled from bogus bills posted in IESCO billing system during the period of 2015 to 2019. Similarly, in FIR No.52/2020, petitioner Khalid Mehmood, Commercial Assistant, CO-I, IESCO, Islamabad acquired Toyota Passo, Model 2015, bearing registration No.ADK-259-Islamabad from the crime proceeds after commission of predicate offence under Anti-Money Laundering Act, 2010 mentioned in FIR No.10/2019, as such, the petitioners have been charged under Section 3 of Anti-Money Laundering Act, 2010, punishable under Section 4 of the Anti-Money Laundering Act, 2010.

11. The bare reading of Anti-Money Laundering Act, 2010 reveals that it provides the prevention of money laundering, combating financing of terrorism and forfeiture of property derived from, or involved in, money laundering or financing of terrorism and for matters connected therewith or incidental thereto. The Act provides complete mechanism and definition of concept of Targeted Financing Sanction, Suspicious Transaction Report, Regulators, Proceeds of Crime, the Investigating or Prosecuting Agency, Financial Monetary Unit as well as of Property for the offence of money laundering. Now the question arises as to whether the offences with which petitioners have been charged are of same transactions or originated from same transaction qua the allegations referred in earlier FIR No.10/2019 registered by the FIA against the petitioners. The answer to such proposition has been considered in the light of definition of offence of money laundering provided in Section 3, which is reproduced as under:

3. ***Offence of money laundering.*** A person shall be guilty of offence of money laundering, if the person:-

(a) *acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime;*

- (b) *conceals or disguises the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime;*
- (c) *holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime; or*
- (d) *participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates, or counsels the commission of the acts specified in clauses (a), (b) and (c).*

Explanation-I. *The knowledge, intent or purpose required as an element of an offence set forth in this section may be inferred from factual circumstances in accordance with the Qanun-e-Shahadat Order, 1984 (P.O. 10 of 1984).*

Explanation II. *For the purposes of proving an offence under this section, the conviction of an accused for the respective predicate offence shall not be required.*

12. The above referred definition clearly states that any person who acquires, converts, possesses, uses or transfer any property knowing or reason to believe that such property is the proceed of crime, which means that the charges in FIR No.10/2019 qua embezzlement and criminal breach of trust committed by the petitioners and causing tentative loss of Rs.207,752,411/- to the national ex-chequer was further used and converted by the petitioners Muhammad Rafique and Khalid Mehmood for the purchase of a plot and a vehicle, respectively, as such, there is no denial on record that petitioners are beneficial owners of these properties in question and they admitted this fact that the plot and vehicle was in their name, hence, the said two properties are fully covered under the definition of "**property**" provided in Section 2(xxx) of the Anti-Money Laundering Act, 2010, but now the question arises as to whether these two properties are covered in terms of definition of "**property involved in money laundering**" as defined in Section 2 (xxxii), which explains that who holds or has held the property, which has been derived or obtained directly or indirectly from offence of money laundering, as such, this aspect

relates to a question of fact and same could only be determined after recording of evidence in the learned Trial Court.

13. The other important question raised in this petition is as to whether the second FIR could have been registered when it was already in the notice of FIA authorities while carrying investigation in the subsequent FIRs No.51 and 52 of 2020 by the investigating agency in terms of Section 2(xxxviii) of the AMLA, 2010 for the prosecution of offences of money laundering, the same has to be seen in the light of the entire scheme of this legislation, its specialized character, difference of offences, jurisdiction and in the light of Section 39 of the Act, which provides the overriding effect.

14. It is also settled law that any enactment having overriding clause, like Section 39 of the Anti-Money Laundering Act, 2010, shows its special character of being special law and excludes the general law. In other words, the special provision overrides the general provision and the special enactment prevails over general enactment, even, the special law dealing with specific matter provides special procedure, therefore, special procedure in such matter would be followed that the same has not been provided under the general law, as such, recourse to general law is permissible when special law is silent on particular point, except where the provision of general law is inconsistent with the provision of special law. It is also settled that special law is to be applied to a particular case on the basis of special jurisdiction envisaged in that particular law and provisions of general law stand displaced as held in 1996 SCMR 826 (Neimat Ali Goraya v. Jaffar Abbas). Furthermore, while taking analogy from cases reported as PLD 2002 Karachi 83 (M/s Noonni Traders, Karachi v. Pakistan Civil Aviation Authority), 2010 SCMR 27 (Smaeel vs. The State), PLD 2010 Lahore 498 (The State v. Fazeelat Bibi), 1993 CLC 2009 Karachi (National Bank of Pakistan v. Emirates Bank International Ltd.) and 2014 CLD 582 Lahore (Saeed Ullah Paracha v. Habib Bank Ltd.), it has been observed that

special law prevails over the general law and all the specialized kinds of offences, like predicate offences, and the special procedure dealing with anti money laundering is not provided in the Pakistan Penal Code, 1860 or in any other law disclosing specific character of AMLA, 2010, as such, there is no second opinion that it is a special statute providing special legislative intent to deal with specialized crime and when such kind of special laws have been promulgated the legislature has to provide an overriding clause in order to protect its character to prevail over any other law, legislation, rules and administrative instructions. The piece of legislation having overriding effect has to be interpreted in the light of phraseology and language used by the legislature. The Courts while interpreting laws relating to specialized economic activities and complexities of recent times do not admit of solution through any doctrinaire or straitjacket formula as held in PLD 2007 SC 133 (Federation of Pakistan v. Haji Muhammad Sadiq). The plain language of Section 39 of AMLA, 2010 provides an overriding effect notwithstanding anything contained in any other law and this special Act is in addition to the Anti-Narcotics Force Act, 1997, Control of Narcotic Substances Act, 1997, Anti Terrorism Act, 1997, National Accountability Ordinance, 1999 and any other law relating to predicate offences. Section 39 of the Act clearly establishes the legislative intent that this special law has precedence on all other specialized crimes referred in other laws, therefore, the argument advanced by learned counsel for petitioner that the AMLA, 2010 is not a special law, rather same has to be applied in earlier FIR, is not legally justified.

15. By minute scanning of Anti-Money Laundering Act, 2010, it appears that the predicate offences specified in Schedule-I in terms of Section 2(xxvi) of the Act includes all major offences of Pakistan Penal Code, 1860, including but not limited to murder, kidnapping, slavery, compulsory labor, rape, theft, theft of vehicle, extortion, robbery, dacoity, hijacking, criminal breach of trust, forgery,

cheating, counterfeiting, etc., offences mentioned in the Pakistan Arms Ordinance, 1965, Foreigners Act, 1946, Prevention of Corruption Act, 1947, Foreign Exchange Regulation Act, 1947, Copyright Ordinance, 1962, Customs Act, 1969, Securities Act, 2015, Emigration Ordinance, 1979, Sales Tax Act, 1990, Control of Narcotic Substances Act, 1997, Anti Terrorism Act, 1997, Pakistan Environmental Protection Act, 1997, National Accountability Ordinance, 1999, Income Tax Ordinance, 2001, Prevention and Control of Human Trafficking Ordinance, 2002 and Federal Excise Act, 2005, though the specialized offences in these special laws have been covered only, but this shows the very intent of legislature to cater the need of the hour, which has also been recommended under the international best practices drawn by the Financial Action Task Force (FATF) on combating money laundering and financing of terrorism and proliferation adopted in the year 2012, updated in October, 2021, in which the law enforcement agencies have been encouraged to develop a pro-active parallel financial investigation, by investigating and prosecuting the money laundering cases independently by using the term "*standalone*". The proceeds of crime have been explained in Section 2(xxviii) of AMLA, 2010, which reads that, "*any property derived or obtained directly or indirectly by any person from the commission of a predicate offence or a foreign serious offence.*" This aspect has to be considered along with the definition of offences of money laundering provided in Section 3 above, which explains that any person, who is guilty of other offences under the Pakistan Penal Code, 1860 and other special law, if committed any act of money laundering or predicate offence or acquire or derive any proceeds of crime from normal offence, then this special act comes into play, as a result the later portion of its first crime has to be dealt with separately under this special legislation of AMLA, 2010.

16. At this stage, learned counsel for petitioner has raised a legal question that in the light of PLD 2018 SC 595 (Mst. Sughran Bibi vs. The State), the very

registration of second FIR on the basis of same transaction is not permissible. Now dealing with this proposition, I have attended to the said judgment, whereby the apex Court has laid down certain parameters where a different version of same occurrence by different persons have to be considered as one transaction and to be registered in the first or same FIR and the registration of second FIR is not permissible, even the cross version concept has to be recorded in first FIR only, but there is a marked difference of those offences and concepts recorded in the case of *Mst. Sughran Bibi supra* if put in juxtaposition with the Anti-Money Laundering Act, 2010, which is a special enactment providing the concept of predicate offences and money laundering, which are not part of any other penal provision under the Pakistan Penal Code, 1860 or any other law, rather they are in addition to the main offences and treated as separate crime.

17. Now the question arises that when FIR No.10/2019 was registered by the FIA against the petitioners for their alleged embezzlement and fraud in the national ex-chequer by allegedly preparing and posting bogus scrolls related to IESCO Consumer Bills using fake bank statements along with bill stubs with fake bank stamps, as to whether the subsequent registration of FIRs bearing No.51/2020 and 52/2020 under the Anti-Money Laundering Act, 2010 are valid, the answer has to be seen in the light of two particular allegations raised against the petitioners, whereby they after committing the offence of embezzlement and criminal breach of trust in first FIR No.10/2019, used the proceeds of crime in terms of Section 2(xxviii) of the AMLA, 2010 and *prima facie* converted the crime proceeds into a plot and a vehicle, though the same was originated on the basis of first offence in first FIR, but the Anti-Money Laundering Act, 2010 catered this second part in a second compartment in order to deal with this modern times crime to combat this aspect, which is not covered under the ordinary crimes of Pakistan Penal Code, 1860 or any other law for the time being in force.

18. Learned counsel for petitioners have also raised another question that the very registration of FIRs No.51 & 52 of 2020 for offences under the AMLA, 2010 are part of same transaction originated from first FIR and, as such, the offences which indicate proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design are to be treated under the phrase "*same transaction*", but after enactment of AMLA, 2010 the legislature has extended different meaning and created a new situation where the crime under AMLA, 2010, though initiated from the continuity of action from first crime, even commonality of purpose or design has also been depicted from circumstances, but that has been considered as a separate crime and in this regard it is the duty and obligation of court as well as of Investigating Officer and prosecuting agency to differentiate for several offences which are part of same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principle and subsidiary, so as to result in one continuous action. However, the special need has been catered through AMLA, 2010 where subsequent conversion of crime proceeds have been given different meaning by the legislature, therefore, all the courts should have applied the legislative intent in its natural way while considering the legislative purpose as to why particular enactment was enacted by the legislature. This Court is of the view that legislature has considered the existing crimes and to correct some defects in existing laws as in majority of cases the proceeds of crime have been converted / transferred in different formations in and outside the country or converted into the use which could not be restored to its original state, in that particular situation, the general law is silent, therefore, AMLA, 2010 has filled in the gap in the specialized need concept, where legislature has promulgated the new law to handle the situation. The Courts should have also construed the reasons for this special enactment in their mind with reference to its intended scope and purpose,

therefore, it is expected from all courts to carry out the very purpose of the Act, rather than to defeat it, especially when the language is unambiguous and statute's meaning is clear, as a result the statute must be accorded and the clear meaning should be considered without any deviation and no departure is to be applied in any manner.

19. While considering the above discussion, this Court is of the view that AMLA, 2010 has to be given its purposeful and prosperous interpretation on the basis of literal approach of reading a statute in ordinary and natural way as held in PLD 2011 SC 260 (Syed Mukhtar Hussain Shah v. Mst. Saba Imtiaz). Likewise, the jurisdiction of the Special Court in terms of predicate offences under the AMLA, 2010 has to be given full meaning and such intention of legislature would not be interrupted in any manner as held in PLD 2011 SC 407 (Munir Hussain Bhatti v. Federation of Pakistan). Similarly, it is also settled principle of law that the Court always lean in favour of validity of statutory instrument and interpretation, which save the law, should be adopted, rather than holding a law to be invalid, unconstitutional or *ultra vires* as held in 2016 SCMR 69 (PTA v. PTCL), PLD 1975 SC 397 (Mehreen Zainbun Nisa v. Land Commissioner), PLD 1995 SC 423 (Multiline Associates v. Ardeshir Cowasjee), PLD 1997 SC 582 (Elahi Cotton Ltd. v. Federation of Pakistan), PLD 2007 SC 133 (Federation of Pakistan v. Haji Muhammad Sadiq), PLD 2010 SC 983 (Syed Aizad Hussain v. Motor Registration Authority), 2000 SCMR 1956 (Tariq Nawaz v. Government of Pakistan).

20. This Court has also attended to the recent model as argued by the learned AAG, Barrister Muhammad Mumtaz Ali, who has explained similar legal position in Indian jurisdiction, known as "*Prevention of Money Laundering Act, 2002*" (PMLA), which is an exhaustive instrument, whereby the Indian jurisdiction has also dealt with similar situation where a series of offences originated from first offence culminated into predicate offences, like in our

jurisdiction, and similar question was raised under Article 226 of the Constitution of India praying to issue writ of certiorari for quashing of entire proceedings. The matter has been dealt with by the Madras High Court in the case of "Smt. Soodamani Dorai vs The Joint Director Of Enforcement (W.P. Nos.8383 and 8384 of 2013)", dated 04.10.2018, authored by Hon'ble Mr. Justice S. M. Subramaniam, whereby it was held that:

23. *The offence of money laundering is not covered under any other provisions of law. Section 3 enacted by 2002 Act is a new offence and stands by itself. Section 44(1)(c) of the Prevention of Money Laundering Act, 2002, it is provided that if the Court which takes cognizance of the scheduled offences is other than the Special Court under the PMLA, the Authority should move an application for transfer of the scheduled offence to the Special Court and the Special Court, on receipt of such case, proceed to deal with it from the stage at which it is committed. Therefore, it is clear from the provisions of the Act that the offence of money laundering stands by itself. As evident from Section 8(6) of the Act, the Court will release the property only if it is found on the conclusion of trial under PMLA that the offence of money laundering has not taken place or if the property is not involved in money laundering. Therefore, adjudication, prosecution, trial under PMLA is independent of scheduled offence. This is also clear in view of Section 24 of the PMLA, 2002, which deals with burden of proof as it is clearly stated that the burden of proof relating to proceeds of crime involved in money laundering is on the accused whereas the burden of proof in the scheduled offences is on the prosecution. Therefore, though the ECIR may have been registered following a scheduled offence, the property in possession of the person, against whom allegations are made, is found to be involved in money laundering, then he can be punished independently of the scheduled offence. Therefore, mere stay of the predicate offence is not a ground for preventing the Directorate of Enforcement from proceeding under the PMLA, 2002.*

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62. *It is made clear that the very initiation under the Prevention of Money Laundering Act, 2002 is not akin to that of the initiation of criminal proceedings under the Indian Penal Code. The Prevention of Money Laundering Act, 2002 is a Special Act contemplating an administrative procedure at the initial stage and thereafter prosecution.*

The Act has got certain special purposes and therefore, the initiation of proceedings under the Prevention of Money Laundering Act, 2002 can never be compared with the initiation of criminal proceedings under the Indian Penal Code. The enactment is a distinct one wherein separate procedures are contemplated in order to protect the interest of the alleged offenders also. The authorities under the Prevention of Money Laundering Act, 2002 cannot jump into the conclusion that the offenders are arrested at the first instance. An administrative procedure of verifying the records, recording statements of the offenders and other persons are provided under the Act. The method of adjudication, investigations are absolutely different and distinct and no way connected with the regular criminal cases registered under the Indian Penal Code either by Central Bureau of Investigation or by the other Investigation Agencies. Thus, the initiation of action under the Prevention of Money Laundering Act, 2002 cannot have any implications in respect of the registration of other cases under the Indian Penal Code or under any other Penal Laws."

21. Similarly, the Delhi High Court in the case of "Upendra Rai vs Central Bureau of Investigation" (W. P. (CRL.) 1923/2020), dated 13.05.2021, authored by Hon'ble Mr. Justice Vibhu Bakhru, has decided the question of special jurisdiction while dealing with the cases of anti money laundering in the following manner:

27. Sub-section (2) of Section 43 of the PMLA expressly provides that while trying an offence under the PMLA, a Special Court shall also try an offence, other than the offence of money laundering, with which the accused may, under the Cr.PC, be charged at the same trial. Section 220 of the Cr.PC provides for cases where multiple offences may be tried at one trial. Sub-Section (1) of Section 220 of the Cr.PC, inter-alia, provides that if series of acts are so connected together as to form the same transaction and more than one offence has been committed by the accused, he may be charged with and tried for each offence at one trial. In such cases, where the offence of money laundering and the predicate offence arise from the same transaction, the Special Court under the PMLA would have the jurisdiction to try the same.

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32. If one examines the language of Clause (c) of Sub-section (1) of Section 44 of the PMLA in light of the explanation to Sub-section (1) of

Section 44 of the PMLA, it is apparent that it is not necessary that only trial of such predicate offences, which can be tried along with the offence under the PMLA, may be transferred to the Special Court. Clause (c) of Section 44(1) of the PMLA also clarifies that once a case relating to a scheduled offence is transferred to the Special Court, the Court would proceed with the said case from the same stage at which it is committed. Plainly, there may be cases where the trial of a predicate offence and the trial for an offence under the PMLA are at different stages. In such cases, it is obvious that the trial for the scheduled predicate offence and the trial for the offence punishable under Section 4 of the PMLA would proceed separately and not as a single trial.

22. This Court has also been guided by the judgment of Hon'ble Supreme Court of India passed in the case of "P. Chidambaram vs. Directorate Of Enforcement", reported as (2019) 9 SCC 24, dated 05.09.2019, authored by Hon'ble Mr. Justice R. Banumathi, wherein it was held that even anticipatory bail should not be granted in such type of crimes nor the specialized reports from overseas banks or companies be shared with the accused at the investigation stage. Even it has been declared that *Prevention of Money Laundering Act, 2002* is special enactment in which it has been defined that money laundering is a process of concealing illicit sources of money and launderer transforming the money proceeds right from criminal activity into funds and moved to other institutions and transform into illegitimate assets. The *Prevention of Money Laundering Act, 2002* was enacted in pursuance of guidelines adopted by the special session held by the *United Nations General Assembly* held in 1998 calling upon the member states to adopt the national money / laundering legislation / program, primarily with a view to meet out the serious threat posed by money laundering to the financial system of the countries and to their integrity and sovereignty.

23. Now adverting again to the *Anti-Money Laundering Act, 2010* in Pakistan, which deals with the money laundering issue, crime proceeds, and all kinds of properties involved in money laundering, has also provided the specialized

regulatory mechanism known as AML/CF Regulatory Authority, as defined in Section 6(a) of the Act, including Self Regulatory Body (SRB), as specified in Schedule-IV of the Act, as such, the AML/CF Regulatory Authority shall exercise the powers and perform the functions set out in the Act, whereby certain guidelines, regulations and directions have also been issued by the Customer Due Diligence (CDD) in the banking system or other systems, suspicious transactions reports, reporting mechanism, including the monitoring and supervision of targeted financial sanctions to freeze and pass a prohibitory order in relation to property of designated person under the *United National (Security Council) Act, 1948* or the *Anti Terrorism Act, 1997*. The Act also provides the concept of National Executive Committee which has been constituted by the Federal Government to make recommendations to the Federal Government to make rules for effective implementation of the Act and to adopt the counter measure as called by the FATF to combat money laundering and financing of terrorism. The regulator in this law has also been empowered to cooperate with foreign counterpart and shall adopt reciprocal arrangements for the effective prosecution and counter offence of anti money laundering. The oversight body of SRB (Self Regulatory Body) has also been notified by the Federal Government as referred in Schedule IV of the Act to make regulations and monitor as well as to oversee different issues under the law for imposition of sanctions against those failing to comply with provisions of the Act, rules or regulations made there-under, as such, the proper procedure for furnishing of information by reporting entities has also been laid down in this law. All these orders by the regulators have also been catered with the concept of appeal to any aggrieved person in terms of Section 7(j) of the Act.

24. The investigating officer in this special crime is also equipped with authority to attach any property on the basis of report in his possession received from concerned prosecuting agency or with prior permission of the

Court, if he reasonably believes that the property involved in the money laundering for a period not exceeding 180 days from the date of order, even the investigation mechanism has separately been settled in Section 9 of the Act, as to how and under what circumstances seizure of property could be made, and a prior notice is also required to be issued to the concerned person to indicate his source of income, earning or assets, out of which or by means of which he had acquired the property in question or any other relevant information required in such type of investigation, however the law has envisaged the concept of due process by extending right of hearing in terms of Article 10-A of the *Constitution of the Islamic Republic of Pakistan, 1973* to an aggrieved person in a proper manner before such type of action of attachment or seizure is taken. The Court has also been given an authority to extend the protection of right of privacy to an individual, who is being investigated as the Investigating Officer is not permitted to use any method of intercepted communication, accessing computer system unless permission is sought from the court of law, which is only meant for 60 days, though said order may be extended on the basis of situation or reason given in written request by the Investigating Officer. The law also declares the offences under anti money laundering being non-bailable and cognizable as well as application of *Criminal Procedure Code, 1898* in all manners; even right of appeal has been provided.

25. While going through the analogy of *Anti-Money Laundering Act, 2010*, following principles should be kept in mind being the legislative intent behind the said law.

- i) *AMLA, 2010* is a special law to deal with prevention of money laundering, combating financing of terrorism and forfeiture of property derived from, or involved in, money laundering.

- ii) All offences defined in *AMLA, 2010*, including the predicate offences specified in Schedule-I of the Act, when committed by any person, has to be tried under *AMLA, 2010*.
- iii) Any asset, property or proceeds of crime, converted into any property, moveable or immovable, by any person derived or obtained directly or indirectly from the commission of offence of money laundering, or used or intended to be used in commission of money laundering, exclusively fall within the ambit of *AMLA, 2010* notwithstanding the previous offences ordinarily committed by an accused person at the first instance, unless the same is included in the 1st Schedule of *AMLA, 2010*.
- iv) Any offence committed by accused person under the *Pakistan Penal Code, 1860* or any other law that falls within the definition of a predicate offence in subsequent investigation after discovery of incriminating material, second FIR should be registered.
- v) A separate investigation has to be conducted by the investigating agency as defined in Section 2(xviii) of *AMLA, 2010*.
- vi) Anti Money Laundering / Counter Financing of Terrorism Regulatory Authority has been established under this law while dealing with the Financial Monitoring Unit notified by the Federal Government in order to deal with Suspicious Transaction Reports (STRs) and Report on Currency Transactions, prescribed a procedure for furnishing of information by reporting entities qua the customer due diligence (CDD).
- vii) Specialized Investigating Officer be appointed qua the property suspected to be created / obtained / used through proceeds of crime, which shall be attached by the Investigating Officer, shall investigate after due notice to the accused person qua his sources of income, earning or assets in terms of Section 9 of the Act and

thereafter the Investigating Officer pursuant to considering the reply declares the property involved in money laundering shall apply to the court for confirmation of the attachment of the property.

- viii) The Court under the cases of *AMLA, 2010* shall deal with the properties under this Act after giving proper right of hearing to the accused person, proceed with attachment, retention, seizure and forfeiture of the property, even in cases of predicate offences and money laundering after conclusion of the trial.
- ix) Special procedure for seizure and search has been provided separately.
- x) The offences are non-bailable and cognizable.
- xi) *Criminal Procedure Code, 1898* is applicable so far as it is not inconsistent with the provision of *AMLA, 2010*.
- xii) The Federal Government may enter into agreement on reciprocal basis with Government of any other country to deal with the investigation and prosecution of any person, exchange of information or any other matter for identifying, tracing of person and properties, including but not limited to attachment, seizure and forfeiture of property, extradition of person, etc.
- xiii) Any person accused in any case under ordinary charges or under any special law, if committed the offence under *AMLA, 2010*, shall be proceeded separately, even if his subsequent act is part of first FIR or case or offence.
- xiv) Both the offences under ordinary law and *AMLA, 2010* should have been tried separately having no effect on each others' findings.
- xv) The judgment of acquittal in first FIR should not be considered ipso facto beneficial in subsequent FIR / trial under *AMLA, 2010*.

- xvi) Under *AMLA, 2010*, burden of proof relating to proceeds of crime involved in money laundering is on the accused, whereas the burden of proof in the scheduled offences is on the prosecution.
- xvii) Initiation of proceedings under *Pakistan Penal Code, 1860* cannot be compared with *AMLA, 2010*.
- xviii) It is not necessary to arrest the accused at the first instance unless situation so warrants, which may result into disposal, destruction or elimination of property under *AMLA, 2010*.
- xix) Initiation of action under *AMLA, 2010* has no implication in respect of the registration of other cases in offences under PPC or any other Special Law.
- xx) *AMLA, 2010* has an overriding effect notwithstanding anything inconsistent contained in any other law, the Act shall be in addition to, and not in derogation of *Anti-Narcotics Force Act, 1997*, *Control of Narcotic Substances Act, 1997*, *Anti Terrorism Act, 1997* and *NAO, 1999* and any other law relating to predicate offence.
- xxi) The Court of Session established under *Criminal Procedure Code, 1898* shall have jurisdiction to try and adjudicate upon the offences punishable under *AMLA, 2010*. In case where predicate offence is triable by any court other than Court of Sessions, the offence of money laundering and all matters connected therewith shall also be tried by the court trying the predicate offence, unless the Court is not inferior to the Court of Session.

26. Keeping in view the above position, now this Court has to deal with the issue qua quashing of FIR No.51 and FIR No.52, even dated 09.12.2020, under Section 4 of *Anti-Money Laundering Act, 2010*, P.S. FIA/ACC, Islamabad which were registered subsequent to FIR No.10, dated 02.08.2019, under Sections 420, 464, 468, 471, 473, 419, 409, 109 PPC read with Section 5(2) of PCA, 1947 registered at P.S. FIA/ACC Islamabad, whereby the primary argument of the

petitioners is that when first FIR has already been lodged, subsequent FIR could not be registered, as such, this principle has been explained in PLD 2018 SC 595 (Mst. Sughran Bibi vs. The State), but the said principle is based upon the concept of same transaction with reference to a series of crime having proximity of time and committed by same accused person under ordinary law i.e. *Pakistan Penal Code, 1860* or any other special enactments, but special needs qua disposal and acquisition of criminal proceeds or their conversion have not been provided in the *Pakistan Penal Code, 1860* in any express manner due to which majority of the accused persons are set free and even the specialized nature of crime, which emerges in the recent past i.e. financing of terrorism or suspicious financial transactions, which lead to illegal gains based upon the unregulated business activities or suspicious transactions not documented at any forum, authority, or regulatory regime and are used to dislodge the entire financial system, such specialized kind of category has now been dealt with under the *Anti-Money Laundering Act, 2010* by declaring the same as predicate offences, which have not been explained in any other legislation prior to promulgation of *AMLA, 2010*. The legislative intent is most significant in this law, which is considered by the legislature while taking into account all the previous laws and offences, which resulted into creation of this special law and this aspect has been explained in Section 39 of the Act, where overriding effect has been provided notwithstanding anything contained in any other law, even the *Anti-Money Laundering Act, 2010* has been considered in addition and not in derogation of the *ANF Act, 1997, CNSA, 1997, Anti Terrorism Act, 1997* and *NAO, 1999*, in such scenario, this Court has to lean in favour of legislative intent.

27. The quashing of subsequent FIRs, as claimed by the petitioners by exercising powers under Section 561-A Cr.P.C., has to be dealt with under the basic principles settled by the apex Court in cases reported as PLD 2010 SC 969 (Muhammad Abbasi v. S.H.O. Bhara Kahu), 2006 SCMR 276 (Col. Shah Sadiq v. Muhammad Ashiq), 2011 SCMR 1937 (Rana Shahid Ahmad Khan v. Tanveer

Ahmed), 2016 SCMR 447 (D.G. FIA v. Kamran Iqbal), 2000 SCMR 122 (Miraj Khan v. Gul Ahmed), PLD 1992 SC 353 (A. Habib Ahmad v. M.K.G. Scott Christian), PLD 2006 SC 598 (Muhammad Mansha v. S.H.O. P.S. City, Chiniot, District Jhang) and 2008 SCMR 76 (Dr. Ghulam Mustafa vs. The State), wherein it has been held that only those cases shall be quashed, from which no offence is made out from bare reading of the FIR or where there is no legal authority for registration of a criminal case or where the very registration of FIR is based upon malafide and considered to be abuse of process of law and / or where no other alternate remedy is provided to deal with the situation raised in any criminal case, but all these principles are not applicable in cases pertaining to the *Anti-Money Laundering Act, 2010*, as the money laundering is a distinct offence, hence the cases require thorough probe and investigation qua the predicate offences or property or the proceeds of crime or the property obtained by the accused persons for which they have to discharge the burden under this law, therefore, the ground raised by the petitioners for quashing of second FIRs is not legally justiciable nor the very registration of subsequent FIRs under AMLA, 2010 seems to be contrary to principles laid down in the case of *Mst. Sughran Bibi supra*, which has different context, meaning and interpretation if seen with legislative intent of AMLA, 2010, hence both the writ petitions are hereby **DISMISSED.**

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 28.01.2022.

JUDGE

Approved for reporting.

Khafid Z.