

Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE.
JUDICIAL DEPARTMENT

W.P. No. 16567 of 2021

Abdul Saboor

Versus

Federation of Pakistan etc.

JUDGEMENT

Dates of Hearing:	28.04.2021, 09.06.2021, 01.07.2021, 23.09.2021, 01.10.2021, 08.10.2021, 24.01.2022, 23.05.2022, 30.05.2022, 31.05.2022, 01.06.2022, 13.06.2022, 17.06.2022, 27.06.2022, 29.06.2022 & 30.06.2022.
Petitioners By:	<p><u>In W.P. Nos.16567, 27072, 67652 & 28111 of 2021</u> M/s Imtiaz Rashid Siddiqui, Barrister Sheheryar Kasuri, Raza Imtiaz Siddiqui, Jamshaid Alam, Sabeel Tariq Mann, Qadeer Ahmad Kalyar & Muhammad Hamza Sheikh, Advocates</p> <p><u>In W.P. Nos. 56349, 67310, 56280, 60213 of 2021 & 3646 of 2022.</u> Barrister Muhammad Umer Riaz, Saqib Haroon Chishti, Haroon Rashid Mir, Waqas Umer & Rana Rehan, Advocates</p> <p><u>In W.P. Nos.24755 and 24757 of 2021.</u> M/s Ashtar Ausaf Ali, Barrister Asad Rahim Khan, Ms. Nimra Arshad & Khalil Ahmed Bhulla, Advocates</p> <p><u>In W.P. No.21462 of 2022, 80285 of 2021, 363 of 2022.</u> M/s Mohammad Shoaib Rashid, Waleed Khalid & Faizan Daud, Advocates</p> <p><u>In W.P. Nos.48665, 18942, 38830, 48846 of 2021, 12661, 3678, 3189, 12657, 3675, 12660 & 12662 of 2022.</u> M/s Muhammad Ajmal Khan, Mian Ejaz Latif & Malik Farhan Babar, Advocate for the petitioner</p> <p><u>In W.P. No.37934, 39048, 39045, 39058, 42302, 49013, 45025, 67756 & 74919 of 2021.</u> M/s Muhammad Mohsin Virk, Tahir Shabbir, Nasir Khan, Malik Farhan & Muhammad Fezan Saleem, Advocates</p> <p><u>In W.P. No.74306 of 2021.</u> Syed Tassadaq Murtaza Naqvi & Syed Tassadaq Mustafa Naqvi, Advocates</p>

	<p><u>In W.P. Nos.12031, 34504, 35964, 35967, 35977, 35989, 36873, 36889, 36883, 36900, 42551,46861, 47618, 48978, 52337, 55404, 27704, 29710, 29716, 39236, 39243, 39249, 39253, 45551, 57164, 52333, 58076, 44232, 59967, 60012, 65189, 63615, 70197 of 2021 & 50 of 2022.</u></p> <p>M/s Shahbaz Butt, Khurram Shahbaz Butt, Muhammad Ahsan Mahmood Butt, Asad Abbas Raza, Muhammad Usman Zia, Muhammad Ibraheem Hassan, Mudassir Aftab, Muhammad Yaqoob, Muhammad Danish Zuberi & Aqeel Jffar, Advocates</p> <p><u>In W.P. No.25509 of 2022.</u></p> <p>Ch. Muhammad Arfan Faiz Kalaar, Ch. Rizwan Kashif & Ch. Adnan Faiz Kalaar, Advocates</p> <p><u>In W.P. Nos.9830 & 9839, 29000, 29005, 29011 & 30179 of 2022.</u></p> <p>M/s. Muhammad Mansha Sukhera, M. Muqadam Sukhera & Malik Muhammad Ali Awan, Advocates</p> <p><u>In W.P. Nos.28990 of 2022.</u></p> <p>M/s Hashim Aslam Butt, M. Hafeez Uppal, Syed Saqlain Hussain, Asad Tariq & Ahmad Yar Khan, Advocates</p> <p><u>In W.P. No.4624, 4626, 12486, 15993 & 16001 of 2022.</u></p> <p>M/s Touqeer Ahmad Ranjha, Shahzaib Chattha & Ali Ijaz Shah, Advocates</p> <p><u>In W.P. No. 71322 of 2021.</u></p> <p>Mr. Riaz Ahmed Ch., Advocate</p> <p><u>In W.P. No.26299 of 2022.</u></p> <p>Mr. Mukhtar Ahmad Awan, Advocate</p> <p><u>In W.P. No.35694 of 2021.</u></p> <p>Mr. Ghulam Ahmed Ansari, Advocate</p> <p><u>In W.P. No. 39503 of 2021</u></p> <p>M/s. Mian Muhammad Naseer & Zunaira Patrick, Advocates</p> <p><u>In W.P. No. 363, 21462 of 2022 & 80285 of 2021.</u></p> <p>Mian Danish Quddous, Advocate</p> <p><u>In W.P. No.36488 & 78377 of 2021.</u></p> <p>M/s S.M. Raheel, Qamar ul Haq Bhatti & Muhammad Imran ul Haq Bhatti & Murtaza Naeem, Advocates</p> <p><u>In W.P. Nos. 57350, 56291, 57342, 76686, 76689, 71303, 76711, 72157, 72160 of 2021 & 6284 of 2022.</u></p> <p>M/s Farhan Shahzad, Zohaib Ali Sidhu, Syed Ali Tarab & Ghulam Ahmed Ansari, Advocates</p> <p><u>In W.P. No. 81801 of 2021.</u></p> <p>Mian Shakeel Ahmad, Advocate</p>
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<p><u>In W.P. No. 54711 of 2021.</u> Mr. Riaz Ahmed Khan, Advocate</p> <p><u>In W.P. No. 61531 & 61524 of 2021.</u> Syed Abid Raza Kazmi, Advocate</p> <p><u>In W.P. No.60213 of 2021.</u> Rana Rehan, Advocate</p> <p><u>In W.P. No.80410 of 2021.</u> M/s Muhammad Zikria Sheikh, Ch. Amanat Ali & Rai Shaban Ali Kharal, Advocates</p> <p><u>In W.P. No.30005, 30008 & 21623 of 2021.</u> M/s. Hafeez ur Rehman Ch., Malik Asif Iqbal, Noor Dad Chaudhary & Ms. Roha Khan, Advocates</p> <p><u>In W.P. Nos. 49933, 50183 of 2021.</u> Mr. Muhammad Naeem Shah, Advocate</p> <p><u>In W.P. Nos.5087, 34780 & 34695 of 2022.</u> Mr. Muhammad Naeem Munawar, Advocate</p> <p><u>In W.P. No.71354 of 2021.</u> Mr. Muhammad Nasir Khan, Advocate</p> <p><u>In W.P. Nos.29771 & 71399 of 2021.</u> M/s Asif Shahdat, Ahmad Hassan, Rana M. Khurram Rafique & Rana M. Umer Rafique, Advocates</p> <p><u>In W.P. Nos.79268, 37382 of 2021 & 15377 of 2022.</u> Mr. Muhammad Akram Sheikh, Advocate</p> <p><u>In W.P. No.42491 of 2021.</u> Mr. Aftab Ahmed Bajwa, Advocate</p> <p><u>In W.P. No. 54858 of 2021.</u> Mr. Shahnawaz, Advocate</p> <p><u>In W.P. Nos. 68138, 68534, 71353, 71354, 71355 of 2021.</u> M/s Tanveer Ahmed & Sh. Zafar ul Haq, Advocates</p> <p><u>In W.P. No.50533 of 2021.</u> Mr. Muhammad Ayub Sheikh, Advocate</p> <p><u>In W.P. No.72160 of 2021.</u> Syed Intiaz Hussain, Advocate</p> <p><u>In W.P. No.36529 of 2022.</u> Mr. Muhammad Ashfaq Mughal, Advocate</p> <p><u>In W.P. No. 23432, 23428 of 2021.</u> Mr. Shahzad Hassan Sheikh, Advocates</p> <p><u>In W.P. No. 30611 of 2022</u> M/s. Shakeel Ahmad Basra, Ijaz Rehmat Basra & Mirza Mubashir Baig, Advocates</p> <p><u>In W.P. Nos.26906, 77267, 77978, 77986, 77239, 76158, 78051, 78231, 81539, 78010, 75273, 81529, 31599 & 61491 of 2021.</u></p>

	<p>M/s Mudassar Shuja ud Din, Behwal Asad Rasul, Touseef Arshad & Shahid Pervez Jami, Advocates</p> <p><u>In W.P. Nos. 48846 of 2021 & 3189 of 2022.</u> M/s. Rana Usman Habib Khan, Noreen Fouzia and Haseeb Arif, Advocate</p> <p><u>In W.P. No.42983 of 2021.</u> Mr. Muhammad Ijaz Ali Bhatti, Advocate</p> <p><u>In W.P. Nos.30790, 75214 of 2021.</u> Mr. Waseem Ahmed Malik, Advocate</p> <p><u>In W.P. Nos. 74742, 71849 & 71877 of 2021.</u> Mr. Muhammad Imran Rasheed, Advocate</p> <p><u>In W.P. No.77284, 77186 of 2021.</u> Mr. Imran Muhammad Sarwar, Advocate</p> <p><u>In W.P. No.1253 of 2021 & 25389 of 2022.</u> Mr. Mustafa Kamal, Advocate</p> <p><u>In W.P. No.3 of 2022.</u> M/s Haris Tanveer Rana & Mian Tabassum Ali, Advocates</p> <p><u>In W.P. No.81808 of 2021.</u> Mian Shakeel Ahmad, Advocate</p> <p><u>In W.P. Nos.29011 & 29000 of 2022.</u> Mahar Saghir Ahmad, Advocate</p> <p><u>In W.P. Nos. 74742, 37382, 71877, 79268, 71849 of 2021</u> Sh. Muhammad Akram, Advocate</p> <p><u>In W.P. No. 38830 of 2021</u> M/s. Omer Wahab & Muhammad Ahsan Nawaz Sial, Advocate</p> <p><u>In W.P. Nos. 63138, 68534, 71355, 71354 & 71353 of 2021</u> M/s Tanveer Ahmad, Shahid Rafiq Mayo & Ms. Nasreen Naseer-ud-Din, Advocate</p> <p><u>In W.P. No.71654 of 2021.</u> Barrister Osama Zafar, Advocate</p> <p><u>In W.P. Nos. 76889 & 76884 of 2021, 17981, 21673, 26529, 30166 and 37408 of 2022.</u> Mr. Zafar Iqbal Mian, Advocate</p> <p><u>In W.P. Nos.48194 of 2021.</u> Mian Muhammad Arshad, Advocate</p> <p><u>In W.P. No. 50533 of 2021.</u> Syed Muhammad Ghazanfar, Advocate</p> <p><u>In W.P. No. 44548 of 2021.</u> Mr. Ghulam Hussain Awan & Ch. Zeeshan ur Rehman, Advocates</p> <p><u>In W.P. No.80680 of 2021.</u> Barrister Danyal Ijaz Chadhar, Advocate</p>
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	<p><u>In W.P. Nos.23432 & 23428 of 2021.</u> Mr. Shehzad Hassan Sheikh, Advocate</p> <p><u>In W.P. Nos.4624, 4626, 12486, 15993, 16001 of 2022.</u> M/s Usman Khalil, Ali Ijaz Shah, Tuqeer Ahmad Ranjha & Shahzaib ul Hassan Chattha, Advocates</p> <p><u>In W.P. No.39064 of 2021.</u> M/s. Ch. Qamar uz Zaman, Muhammad Waqar Akram, Muhammad Khalid, Rai Inam Qadir, Arif Munir & Ms. Zeba Munir, Advocates</p> <p><u>In W.P.N.39503 of 2021.</u> Mian Muhammad Naseem, Advocate</p> <p><u>In W.P. No.38746 of 2021.</u> Mr. Muhammad Amir Latif Sehr Bhutta, Advocate</p> <p><u>In W.P. No.5087 of 2022.</u> Mr. Muhammad Naseem Munawar, Advocate</p> <p><u>In W.P. No.76686 of 2021.</u> Mr. Farrukh Ilyas Cheema, Advocate</p> <p><u>In W.P. No.59858 of 2021.</u> Ch. Anwaar ul Haq Arif, Advocate</p> <p><u>In W.P. No.22738 of 2021.</u> M/s Zahid Ateeq Choudhry, M. Ehsan Awan & Rashid Khan, Advocates</p> <p><u>In W.P. No.35710, 23666 & 23584 of 2022.</u> Mr. Fahad Azhar Butt, Advocate</p> <p><u>In W.P. No.31668 of 2022.</u> Mr. Ikram-ul-Haq Sheikh, Advocate</p>
Respondents By:	<p><u>For Federation</u> <u>In all cases</u> Mr. Azmat Hayat Khan Lodhi, Assistant Attorney General for Pakistan.</p> <p><u>For FBR</u> <u>In W.P. Nos. 65189, 22738, 37934, 27072, 23432, 28111, 24755, 24757, 60219, 61524, 29716, 29710, 67756, 71322, 76711, 76686, 80680, 80285, 77186, 63615, 67652, 81808, 77284, 69545, 74919, 38830, of 2021 & 363, 3189, 1406, 4624, 3646, 4626, 6284, 12031, 12486, 15993, 16001, 19916, 19910, 19913, 19906, 21462, 29011, 23666, 23584, 26299 & of 2022.</u> Mr. Sarfraz Ahmed Cheema, Advocate</p> <p><u>In W.P. Nos. 29771, 31599, 38746, 26906, 60012, 59967, 78377, 81539 & 70197 of 2021.</u> Mr. Khawar Ikram Bhatti, Advocate</p> <p><u>In W.P. Nos. 61491, 71354, 71353, 71355, 71399, 75214, 77978, 77986, 78010, 50533, 52333, 39058, 39045, 39064, 61531, 44548, 60213 & 80410 of 2021 1253, 9830, 9839 & 12661, 15377, 12660, 26529, 37408, 48194 & 3678 of 2022.</u> M/s. Riaz Begum & Muhammad Waseem Malik,</p>

	<p>Advocates</p> <p><u>In W.P. Nos.27704, 77267, 78231, 81529, 42302, 42983, 48846, 48978, 56291, 68138, 68534, 27072 of 2021 & 3675, 16507, 17981, 21673, 25509, 34695, 34780, & 25389 of 2022.</u></p> <p>Mr. Zain ul Abideen Bukhari, Advocate</p> <p><u>In W.P. Nos.36873, 34504, 35989, 36889 & 36883 of 2021.</u></p> <p>Mr. Adeel Shahid Karim, Advocate</p> <p><u>In W.P. No.21623, 30005, 39243, 39236, 30008, 39249, 39253, 55404 & 67310 of 2021</u></p> <p>Mrs. Amina Parveen, Advocate</p> <p><u>In W.P. Nos.35964, 35967, 35977, 36900 of 2021 & 3646 of 2022.</u></p> <p>Malik Abdullah Raza, Advocate</p> <p><u>In W.P. No. 74306, 76158, 76889, 78051, 30179, 37382, 39503, 54858, 60206, 71849, 71877, 75273 & 76884 of 2021.</u></p> <p>Mr. Yahya Johar, Advocate</p> <p><u>In W.P. Nos. 30790, 61521, 60213, 39045, 39058, 39064, 44548, 50533, 52333 and 48194 of 2021.</u></p> <p>Ch. Muhammad Imtiaz Elahi, Advocate</p> <p><u>In Instant petition and in W.P. Nos. 18942, 79269, 16567, 79268 of 2021 & 74742, 35710, 39982 & 03 of 2022.</u></p> <p>M/s. Ahmed Pervaiz & Scheherezade Shaharyar, Advocates</p> <p><u>In W.P. No.30166 of 2022.</u></p> <p>Mr. Sohail Zahid Butt, Advocate</p> <p><u>In W.P. Nos.76686, 80680, 80285 & 77186 of 2021.</u></p> <p>Mr. Faran Ahmad Cheema, Advocate</p> <p><u>For Nos.2 to 4 in W.P. No.42491 of 2021 & 31688 of 2022.</u></p> <p>Mr. Izhar ul Haque, Advocate</p> <p><u>In W.P. No.50337, 50183, 46861 and 49933 of 2021.</u></p> <p>Ch. Muhammad Ashfaq Bhullar, Advocate</p> <p><u>In W.P. Nos. 44232 & 47618 of 2021.</u></p> <p>Ms. Shagufta Ijaz, Advocate</p> <p><u>In W.P. Nos.76689, 48665, 49013, 61491,16567 & 42302 of 2021.</u></p> <p>M/s Aamir Riaz Minhas, Sardar M S Tahir, M. Yasir Khan & Zafar Iqbal Bhatti, Advocates</p> <p><u>In W.P. No. 48665, 49013, 76689, 71303, 72157 & 72160 of 2021 & 5087, 12657, 29000, 29005, 28990, 30166 & 12262 of 2022.</u></p> <p>M/s Ch. Muhammad Zafar Iqbal, Mohsin Ali & M. Wasaf Masood, Advocates</p> <p><u>In W.P. Nos.23428 of 2021 & 34700 of 2022.</u></p> <p>Mr. Anas Sheikh, Advocate</p> <p><u>In W.P. Nos. 37011 & 54401 of 2021</u></p> <p>Mr. Abu Bakr Shahzad, Advocate</p> <p><u>For respondent Nos.3 & 4 in W.P. Nos.56280 & 56349 of 2021.</u></p> <p>Ch. Umar Imran Mayo, Advocate</p>
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	<p><u>In W.P. No.29716 of 2021.</u> Mian Faisal Naseer, Advocate</p> <p><u>For respondents No.3 & 4 in W.P. No.56280, 56349 of 2021 & 6039 of 2022</u> Ch. Imran Masood, Advocate</p> <p><u>In W.P. No.29710 of 2021.</u> Mr. Usman Azam Gondal, Advocate</p> <p><u>In W.P. No.45025, 42551, 77239, 36488 and W.P. No.50 of 2022.</u> Ms. Nadia Bashir Chaudhary Legal Advisor on behalf of Director Intelligence</p> <p><u>Representatives of FBR in all cases</u> Dr. Khalid Malik Director and Dr. Tanvir Hussain Bhatti Additional Director, (I&I) Islamabad.</p> <p>Ms. Sarkhshan Khalid Deputy Director (I&I) Faisalabad.</p> <p>Mr. Abid Rasool, Additional Director (I&I) Multan.</p> <p>Mr. Muhammad Irfan, Additional Director (I&I) Lahore.</p> <p><u>For Customs Department</u> <u>In W.P. No 74742 of 2021</u> Mr. Huma Shahid Butter, Advocate</p>
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SHAMS MEHMOOD MIRZA, J. This writ petition as well as the connected writ petitions, the details whereof are mentioned in the ‘Schedules’ attached hereto, call into question the action of the Directorate of Intelligence and Investigation, Inland Revenue [**Directorate (I&I)**] in initiating proceedings against the petitioners under the provisions of Anti-Money Laundering Act, 2010 (the **Act**) by issuing call up notices and/or registering First Information Reports (**FIR**) against them. The petitioners accordingly pray for setting aside the notices and quashing of the FIRs.

Submissions of the petitioners

2. Mr. Imtiaz Rashid Siddique, Advocate and Mr. Umer Riaz, Advocate initiated the arguments on behalf of the petitioners. Learned counsels made the challenge to the actions of the respondents primarily on the following grounds.

- (a) Notification SRO No.425(I)/2016 dated 20.05.2016 through which Chapter XII-A was inserted in Schedule I

of the Act is violative of the law laid down in Mustafa Impex and others v. Federation of Pakistan **PLD 2016 SC 808** in that the approval of the Federal Cabinet was not obtained before issuance of the said Notification.

- (b) It is stated that the Directorate (I&I) comes within the definition of “*Investigating Agency or Prosecuting Agency*” as contained in section 2(xviii) of the Act. This Directorate was initially constituted by the terms of SRO No.115(I)/2015 dated 09.02.2015 and SRO No.116(I)/2015 dated 09.02.2015. These SROs were declared unlawful by this Court in the judgment reported as F.M. Textile Mills and others v. Federal Board of Revenue and others **2017 PTD 1875** and Nestle Pakistan Limited and another v. The Federation of Pakistan etc **2021 PTD 521**. The Directorate (I&I) was subsequently constituted under SRO No.272(I)/2021 dated 02.03.2021. Section 2(xviii) was inserted in the Act through Anti-Money Laundering (Second Amendment) Act, 2020 dated 24.09.2020. The powers of the Investigation officer under SRO No.272(I)/2021 dated 02.03.2021 read with the newly substituted section 2 (xviii) of the Act cannot be exercised in relation to past transactions since these statutory instruments are prospective in nature.
- (c) By making reference to the provisions of section 21 of the Act, it is contended that the Directorate (I&I) has no authority to register First Information Report (FIR) against the petitioners. It is alleged that only the court can take cognizance of the offence punishable under section 4 on a complaint in writing made by the investigating officer. It is accordingly stated that the FIRs registered against the petitioners in some of the cases including the present petition are liable to be quashed.
- (d) In some cases, the call up notices do not provide any information to the petitioners as to the reasons for

initiating inquiry against them except for stating that they have committed some un-disclosed offence under the Act. The investigating officer is conducting a roving inquiry without any lawful justification. Reliance was placed on judgments reported as Assistant Director Intelligence & Investigation v. M/s B.R. Herman **PLD 1992 SC 485**, A.M.Z. Spinning & Weaving Mills (Pvt.) Limited v. Federation of Pakistan **2009 PTD 1083** and Commissioner Inland Revenue v. MCB Bank Limited **2021 SCMR 1325**.

- (e) The Rules under the Act have not been framed in consequence whereof the necessary framework and the structured procedure guiding the investigating officer in carrying out his functions for the purpose of inquiry is missing. In support of this contention, the petitioners rely on judgments reported as Amanullah Khan v. The Federal Government of Pakistan **PLD 1990 SC 1092**, Abid Hassan v. PIAC **2005 SCMR 25** and Nestle Pakistan Limited v. Federation of Pakistan **2021 PTD 521**. It is furthermore stated that the Act does not lay down any procedure (a) regarding the manner in which inquiry shall be conducted, (b) for the assumption of jurisdiction by the Directorate (I&I), and (c) for registration of an FIR and the manner of arrest of the accused. This Court in the exercise of its jurisdiction under Article 199 of the Constitution, it is contended, can direct the respondents to frame the necessary rules under the provisions of the Act. Reliance is placed on the cases of Sarhad Development Authority v. Syed Muhammad Latif **2015 SCMR 1061**, Government of Baluchistan v. Azizullah Memon **PLD 1993 SC 341**, Election Commission of Pakistan v. Province of Punjab **PLD 2014 SC 668** and Mandi Hassan v. Muhammad Arif **PLD 2015 SC 137**.

- (f) It is also argued that the amendments made in the Act particularly in its section 2(xviii) through Anti-Money Laundering (Second Amendment) Act, 2020 on 24.09.2020 are prospective in nature and cannot be applied retrospectively to transactions that are past and closed. Reference in this regard is made to the cases of Secretary Housing and Physical Environmental Plannings v. Muhammad Ramzan **2018 SCMR 301**, Muhammad Tariq Badr v. National Bank of Pakistan **2013 SCMR 314** and Sheikh Fazal Ahmad v. Raja Ziaullah Khan **PLD 1964 SC 494**.
- (g) In the absence of conviction in the trial of the predicate offence, the trial for the offence of money laundering cannot be held and no proceedings in this regard can be initiated under the Act. Reliance is placed on Justice Qazi Faez Isa v. The President of Pakistan **PLD 2001 SC 1** and Rafi Ullah v. The State **2019 P.Cr.LJ 1608**.
- (h) The impugned notices have reference to past tax periods indicating that the matters agitated therein relate to tax liability whereas the petitioners have already filed their tax returns filed by the petitioners which after routine examination have been accepted for the said period. The tax issues of the petitioners have also been audited in the past which culminated into assessments orders that have since been affirmed/modified/reversed in appellate forums. The matter thus falls in the domain of the taxation authorities and has no nexus with the offence of anti-money laundering.
- (i) Without sufficient incriminating material available with the inquiry officer, the allegation of money laundering which is a serious offence shall violate the dignity of the petitioners. It is argued with reference to the provisions of section 2(viii) of the Act that the competent authorities as defined therein are not required to demonstrate

application of mind for initiation of inquiry against the petitioners. Similarly, the reference in the impugned notices to “credible information” does not have any reference to the nature, credibility and authenticity of the source.

The rest of the learned counsels for the petitioners adopted the above arguments.

Submissions of the Respondents

3. The learned Assistant Attorney General and the learned counsels for the Directorate (I&I) submit that all the petitions are pre-mature in as much as no action till date has been taken or proposed to be taken against the petitioners at the stage of inquiry and investigation. It is argued that mere apprehension of the petitioners against any threatened punitive action is not sufficient to maintain a constitutional petition before this Court. It is also contended that mere issuance of call up notices do not entitle the petitioners to approach this Court as they are simply required to answer the queries put to them in the course of inquiry. The inquiry, it is stated, has been set in motion under the provisions of the Act and as such no cause for grievance has accrued to the petitioners. The holding of the inquiry, according to the respondents, does not infringe any fundamental rights of the petitioners. The challenge to the vires of SRO 425(I)/2016 dated 20.05.2016, it is contended, has been dismissed by this Court in writ petition No.8225 of 2021 titled Mr. Attiqur Rehman v. Federation of Pakistan and writ petition No.8228 of 20121 titled Muhammad Arshad Iqbal v. Federation of Pakistan. The Directorate (I&I) has also supplied details of some of the pending cases where in consequence of the inquiry the Investigation officer dropped the proceedings after it was established that no predicate offence was made out.

4. The petitions in which FIRs have been registered against the petitioners are mentioned in **Schedule A** hereto whereas those calling into question the call up notices in which necessary information regarding the offence is given are included in **Schedule B** hereto. The petitions in which the call up notices do not furnish the necessary details/facts are mentioned in **Schedule C** hereto. In addition thereto, in some cases the petitioners have called into question the summons issued under section 160 of the Code

issued by the investigating officers for calling them to give information/evidence about cases of third parties suspected to have committed the offence of money laundering against whom FIRs have been registered under the Act. These petitions are mentioned in **Schedule D** hereto.

5. In view of the legal questions involved in the case, a notice under Order XXVII-A of the Code of Civil Procedure, 1908 was also served on the Attorney General of Pakistan.

Statutory Framework

6. The legal issues that arise from the pleadings of the parties can best be understood if a brief synopsis and overview of the Act is stated.

7. The preamble of the Act states that its purpose is 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 in addition to providing punishment imposed on the accused also contemplates that he shall also be deprived of the proceeds of the illegal activities and this purpose is achieved by confiscation of the property generated from proceeds of crime.

8. Section 3 of the Act defines the offence of money laundering. It reads as follows.

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.

9. Section 2(xxviii) defines “*proceeds of crime*” which means any property derived or obtained directly or indirectly by any person from the commission of a predicate offence or a foreign serious offence.
10. The term “*predicate offence*” is defined by section 2 (xxvi) to mean an offence specified in Schedule-I to the Act.
11. The agencies nominated by the Act to investigate or prosecute the offence of money laundering are mentioned in section 2(xviii) of the Act which are the National Accountability Bureau (NAB), Federal Investigation Agency (FIA), Anti-Narcotics Force (ANF), Directorate General of (Intelligence and Investigation – Customs) Federal Board of Revenue, Directorate General (Intelligence and Investigation Inland Revenue) Federal Board of Revenue, Provincial Counter Terrorism Departments or any other law enforcement agency as may be notified by the Federal Government for the investigation or prosecution of an offence under this Act.
12. By the terms of section 24, the investigating or prosecuting agencies may nominate such persons as they think fit to be the investigating officers from amongst their officers.
13. The process under the Act is set in motion by the Financial Monitoring Unit (FMU) which receives Suspicious Transactions Reports (STRs) and Currency Transactions Reports (CTRs) from the reporting entities which in turn are analyzed by it and in respect of which it is empowered to call for the record and information from any agency or person. After analyzing the STRs and CTRs, the FMU disseminates the same to concerned Investigating or Prosecuting agencies for inquiry or further action under the Act under section 6 of the Act.
14. In terms of section 8, the investigating officer on receipt of the report from the concerned investigating or prosecuting agency by order in writing and with prior permission of the court shall provisionally attach the property he reasonably believes to be involved in money laundering. Such provisional attachment shall not exceed a period of one hundred and eighty days from the date of the order. The court may, however, grant further extension for a similar period.

15. Section 9 specifies that the investigating officer shall within a period of seven days from the date of order of attachment serve a notice on the person concerned calling upon him to indicate the sources of his income, earning or assets out of which he acquired the property in question and to furnish the evidence on which he relies and all the other relevant information and particulars in regard thereto and to show cause why all or any of such properties should not be declared to be the properties involved in money laundering and forfeited to the Federal Government. In case any such property is being held by a person on behalf of any other person or where such property is held jointly by more than one person, the investigating officer shall also dispatch a copy of such notice to that person and to all persons holding such property. The investigating officer is required by sub-section (2) of section 9 to record a finding whether all or any other properties referred to in the notice issued under sub-section (1) are properties involved in money laundering after considering the reply to the notices issued under subsection (1) and granting hearing to the aggrieved person and taking into account all relevant materials placed on record before him. Upon making a determination that the property in question has been acquired through money laundering, he shall make an application with the court for confirming the attachment whereupon the court after hearing the concerned persons pass the appropriate order, *inter alia*, for attachment or release of the said property.

16. The next important provision is section 20 of the Act which stipulates that the courts of sessions established under the Code of Criminal Procedure, 1898 (**the Code**) shall have the jurisdiction to try and adjudicate the offences punishable under the Act. The proviso to this provision stipulates that where the predicate offence is triable by any court other than the court of sessions, the offence of money of laundering together with all the matters connected therewith and incidental thereto shall be tried by that court (**special court**). In other words, the special courts established under various laws mentioned in Schedule-I of the Act empowered to try the predicate offence shall have the jurisdiction to try and adjudicate the offence of the money laundering provided they are not inferior to the court of Sessions.

17. Section 21 of the Act in so far as it is relevant reads as follows:

21. Offences to be cognizable and non-bailable: (1)

- (1) Notwithstanding anything contained in the Of the Code of Criminal Procedure, 1898 (Act V of 1898) and subject to sub-sections (2) and (3),
 - (a) every offence punishable under this Act shall be cognizable and non-bailable;
 - (b)
- (2) The Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by:
 - (a) the investigating officer; or
 - (b) any officer of the Federal Government or a Provincial Government authorized in writing in this behalf by the Federal Government by a general or special order made in this behalf by that Government:

18. Section 22(1) stipulates that the provisions of the Code shall, in so far as they are not inconsistent with the provisions of the Act, apply to arrest, bail, attachment, forfeiture, investigation, prosecution and all other proceedings under this Act.

19. Section 23 provides the right of appeal to the High Court to any person aggrieved by the final order of the special court.

20. Section 39 of the Act contains a non-obstante clause which states that the provisions of the Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force and that the provisions of the Act shall be in addition to the laws relating to the predicate offences.

21. Section 43 empowers the Federal Government, in consultation with the National Executive Committee, to make rules for carrying out the purpose of the Act.

22. In almost all the cases barring one case, the call up notices have been issued by the Directorate of the Intelligence and Investigation constituted under the provisions of the Income Tax Ordinance, 2001 (the **Income Tax Ordinance**). The Income Tax Ordinance was made part of Schedule-I of the Act through Notification dated 13.07.2020 issued by the Federal Government in terms of section 42 of the Act.

23. Having laid down the essential features of the Act, we can now turn our attention to the legal issues raised by the parties.

Determinations

Is the Act violative of the law laid down in Mustafa Impex's case?

24. The petitioners' stance that SRO 425(I)/2016 dated 20.05.2016 is violative of the law laid down in *Mustafa Impex's* case does not call for a detailed analysis. The ratio of the *Mustafa Impex* case relevant to the issue raised in these petitions is that the constituent elements of the Federal Government are the Prime Minister and the Cabinet and that the term "business" mentioned in the Rules of Business is to be given a wide interpretation so as to include all the work carried out by the Federal Government in the domain of executive action and delegated legislation. It is alleged that before issuance of SRO 425(I)/2016 the formal approval of Cabinet was not obtained and as such SRO 425(I)/2016 violates the law laid down in *Mustafa Impex* case. The contention of the petitioners is not tenable in view of pronouncements of the Hon'ble Supreme Court stating in unequivocal terms that the judgments of that Court would ordinarily operate prospectively. In this regard, reference may be made to the case of Pakistan Mental and Dental Council v. Muhammad Fahad Malik **2018 SCMR 1956** in which the Hon'ble Supreme Court while dealing with a similar issue concluded to the effect that "*The judgment of this Court, unless declared otherwise, operate prospectively, as such, the Amendment Ordinances are not hit by Mustafa Impex's case.*" Similarly, the Hon'ble Supreme Court in its judgment rendered in C.P. No.1622-L/2018 titled Chief Commissioner IR v. M/s Giggy Food (Pvt.) Limited was pleased to hold as follows "*The prospective effectiveness of the rule in Mustafa Impex case laid down by the Court means that actions taken or instruments executed prior to the judgment in the Mustafa Impex case are not affected by the law enunciated by the said judgment.*"

25. It is thus abundantly clear that SRO 425(I)/2016 dated 20.05.2016 which was issued prior to the decision in *Mustafa Impex* case does not come within the mischief of the law laid down in the said judgment.

Can the Directorate (I&I) conduct investigation in cases prior to its inclusion in the definition of “investigating or prosecuting agency” in section 2(xviii) of the Act?

26. The next argument by the petitioners that SRO No.115(I)/2015 dated 09.02.2015 and SRO No.116(I)/2015 dated 09.02.2015 issued under the Income Tax Ordinance and Sales Tax Act, 1990 through which the Directorate (I&I) was constituted were declared null and void by this Court in judgments rendered in the cases of F. M. Textile Mills & others v. Federal Board of Revenue and others **2017 PTD 1875** and Nestle Pakistan Limited and another v. The Federation of Pakistan etc **2021 PTD 521** is also of no avail to them. In fact, the submission so made proceeds on a misapprehension of what the issue involved in the said judgments was. Needless to point out that the Directorate (I&I) was established both by the Income Tax Ordinance (section 230) and Sales Tax Act, 1990 (section 30A). The notifications in question merely bestowed certain powers and functions on the Directorate (I&I) which were brought under challenge in the aforementioned judgments. By referring to section 230 (2) of the Income Tax Ordinance, this Court in the *Nestle’s* judgment observed in paragraph No.29 that SRO No.115(I)/2015 did not specify the functions of the Directorate General (Intelligence & Investigation Inland Revenue) and as such “..... *they will not be able to employ these powers within the sphere of activity settled by law. Even more important than specifying the jurisdiction is the act of specifying the functions of the D.G (I&I) for that will determine the precise nature of the reason for their existence and set out the details of the field of activity.*” Accordingly, this Court struck down SRO No.115(I)/2015 and directed the Federal Board of Revenue “.....*to initiate the process of specifying the functions and jurisdiction of the Officers of the D.G (I&I) and to complete it within two months.....*”.

27. The afore-mentioned Notifications, it may be emphasized, did not allocate any function or power to the Directorate (I&I) for conducting inquiry under or in relation to the offence of money laundering. Be that as it may, the Directorate (I&I) is now included in the definition of “Investigating Agency or Prosecuting Agency” as per section 2(xviii) of the Act. Notwithstanding the fact that this definition was included in section 2 through Anti-Money Laundering (Second Amendment) Act, 2020 dated

24.09.2020, the investigation of an offence is an essential part of and closely related to the procedure and conduct of the investigation and as such the fact that an authority is subsequently added as the investigating agency is no bar on its powers and authority to investigate cases in which the offence is said to have been committed in the past.

Is it mandatory for the Directorate (I&I) to specify in the call up notice the precise allegation against the petitioners relating to the offence of money laundering?

28. We now come to another important aspect of the case which deals with the contents of the call up notices issued by the investigating officer to some of the petitioners. This issue relates to the category of cases mentioned in Schedule C hereto. It is alleged that the call up notices are devoid of any detail of the alleged offence committed by the petitioners or the property which has been acquired allegedly through the proceeds of crime.

29. A sample of such notice issued to the petitioner in writ petition No.27072 of 2021 titled “M/s Educational Services (Pvt.) Limited v. Federation of Pakistan etc” is reproduced below

1- Whereas I. Umar Yar, Deputy Director Intelligence and Investigation (Inland Revenue), have been appointed as Investigating officer by the competent authority under Section 24(1) of the Anti-Money Laundering Act, 2010 (AMLA, 2010) and empowered to exercise powers and discharge duties conferred on me under AMLA, 2010.

2- Whereas as per credible information available with this officer, you are supposed to be involved in the offence of money laundering as per provisions of Section 3 of AMLA, 2010 read with Section XIA of Schedule-1 of AMLA, 2010 during the period 01.07.2015 to 30.06.2015 (Tax Year 2016).

3- Now, therefore, you are hereby called upon to visit this office on 22.03.2021 at 11.A.M. and bring your original CNIC to answer such questions as may be put to you and record your statement.

4- Non-compliance of this notice for attendance will render you liable to proceedings under section 174 of Pakistan Penal Of the Code 1860 in the Court of Law.

The notices in all the writ petitions mentioned in Schedule C hereto follow more or less a similar pattern.

30. As noted above, FMU collects STRs and CTRs from the reporting entities and after analyzing the same passes it on to the investigating or prosecuting agencies. The investigating officer examines the report of FMU

for the purposes of making a determination that the property is involved in money laundering and after executing the attachment process serves a notice to the concerned person soliciting reply from him. The investigating officer after considering all the material available before him is required to record another finding to the effect that the property is in fact involved in money laundering or not. Thus sections 8 and 9 require the investigating officer to make determinations twice in regard to the property suspected to have been derived from the offence of money laundering.

31. During the course of hearing, Mr. Ahmad Kamal, Director, Intelligence and Investigation submitted before the Court that the Directorate has formulated Standard Operating Procedures (SOPs) circulated through Office Orders on 19.11.2020 and 05.03.2021 which lay down complete guidelines for the investigating officers for proceeding with the inquiry/investigation of the offence of money laundering. Copies of these SOPs were also supplied to the Court which shall form part of the record. He also informed the Court that the Directorate (I&I) also undertakes a Desk Audit of the information received from FMU.

32. The essence of the Act from the reading of section 2(xxviii), section 4 and section 9 is that the proceeds of crime is the centerpiece or core of the offence of money laundering and that the said offence only materializes once the substratum condition of proceeds of crime comes into existence. It is for this reason that the investigating officer is required to make determination and record it into writing that the property in respect of which a notice was sent to the person concerned is indeed involved in money laundering on the basis of the available material before him before applying to the court for confirmation of the attachment of the said property (section 9 of the Act). It has already been noted above that the proceedings under the Act are initiated against the person concerned when the Directorate (I&I) receives information from FMU which then results into provisional attachment of the property and issuance of a notice contemplated by section 9 of the Act, the objective being to ascertain and verify the fact that the property has been acquired through the proceeds of crime. It is thus a mandatory requirement of section 9 that the person against whom the allegation is made must be provided with all the relevant information to put him on notice about the

case he must meet. Similarly, the said provision also requires that he must be provided the opportunity to produce all the material before the investigating officer to prove that the property is not involved in money laundering.

33. Office Order dated 05.03.2021 (SOP) deals with call up notices by stipulating the following process to be followed by the investigating officer:

15. Within seven days, immediately after search and seizure under 14 & 15 of the Act or attachment under subsection (1) of the section 8 of the Act, the IO shall serve a notice of not less than thirty days on the person concerned in whose control, possession or ownership, the property and record was found or claims to be aggrieved or interested person.

16. Such show cause notice shall call upon such person to indicate the following.

- a. The source of his legal income and earnings, if any;
- b. the sources or means of which, he has acquired the property and the assets;
- c. the explanation of the record seized under section 14 and 16 of the Act;
- d. the evidence on which he relies;
- e. other relevant information and particulars in support of his plea; and
- f. the lawful justification as to why all or any of such properties should not be declared to be the properties involved in money laundering and forfeited to the Federal Government.

17. Where a notice under this sub-section (1) of section 9 of the Act specifies any property or record as being held by a person on behalf of any other person, attorney, third party, benamidar, or otherwise, a copy of such notice shall also be served upon such other person on receipt of information or representation.

18. Where such property or record is being held jointly by more than one person, such notice shall be served upon all persons holding such property or record.

34. The provisions of section 9 of the Act and the above excerpts of the SOP manifestly compel the investigating officer to impart the necessary information to the concerned person regarding the property allegedly acquired through proceeds of crime allowing him to answer the allegation against him. This is a necessary pre-condition to commence the proceedings against the person concerned for the purposes of attachment of property. It is noted with concern that despite clear command of section 9 of the Act and

the framing of the SOPs, the investigating officers failed to adhere to the terms thereof in issuing notices to the petitioners which were devoid of the requisite information.

35. Even otherwise, respectable authority supports and validates the proposition that the investigating agency at the time of the inquiry or investigation must confront the person who is said to have committed the offence with the allegation against him together with all the necessary details and particulars enabling him to explain his position. In the case of Dr. Arsalan Iftikhar v. Malik Riaz Hussain and others **PLD 2012 SC 903**, the Hon'ble Supreme Court made the following observations.

12. In our order dated 26-07-2012, we have made note of and commented on two letters dated 23-07-2012 and 25-07-2012 which were addressed by NAB to the Registrar of this Court in his official capacity. The two letters simply state that the Registrar is "*acquainted with the facts and circumstances connected to the case*". The Registrar was also asked to bring "*all original documentary and other evidence to the NAB Headquarter*". However, no information or particulars were given as to the nature of the documentary and other evidence or the facts and circumstances of the case. This form of letter has been strongly deprecated by the Courts and is in clear breach of settled law as enunciated by precedent.

13.In the cited precedent NAB has been given express guidelines as to its responsibilities while summoning or requiring the attendance of persons/witnesses in an inquiry. As per ratio of the case, before summoning a person to attend, NAB was duty bound to identify and particularize the information sought from any witness etc. and to state the nexus between such information and the subject of the inquiry being conducted by NAB. It was observed by the Court that "*while calling [for] the information from any person, the person must be informed of the fact, point, allegation, offence, name of accused, specified matter, if any, concerning the matter....in the notice so that the person can furnish such information*". None of this was done by NAB. The Sindh High Court also laid down the principle that if the specified information can be otherwise furnished, then the person "*should not normally be called to appear in person*". The case of Ghulam Hussain Baloch supra gave further clarity to NAB by declaring that "*normally a person should not be asked to appear...for the simple reason that when the document or thing is received by the investigating officer [it] will serve the purpose and if for any reason attendance of such person is [still] required then he can be called by assigning valid and cogent reasons which will appear in the case diary....*"

Similarly, in the case of Assistant Director Intelligence and Investigation Karachi v. M/s B.R. Herman and others **PLD 1992 SC 485** the Hon'ble Supreme Court while construing the scope of section 26 of the Customs Act, 1969 had this to say.

4.The object of section 26 of the Customs Act is to empower the authority to ask for information or require the production of documents or inspect the same in order to determine the legality or illegality of importation or exportation of goods which have been imported or exported, the value of such goods, the nature, amount and source of the funds or the assets with which goods were acquired and the customs duty chargeable therein or for deciding anything incidental thereto. The authority can only for specific purposes of determining the legality or illegality call for such information as required by section 26. The authorized officer can call upon any importer or exporter to furnish information in case where such determination is required. It cannot make a roving inquiry or issue a notice by merely shooting in the dark in the hope that it will be able to find out some material out of those documents and then charge the party of irregularity or illegality. The authority has to state and disclose in the notice, the purpose for which the party is required to produce those documents or supply information. Unless such purpose is specified in the notice, it will be a matter of anybody's guess and the accused party will be put to inquiry without any specific allegation or fact disclosed to him. It does not permit any authority to employ the provisions of section 26 to make indiscriminate, roving and fishing inquiry irrespective of the fact whether any determination of legality or illegality in import, export or funds with which the goods were acquired is to be determined. Even in cases of suspicion of commission of illegality, details should be provided to the party to enable him to have an opportunity to produce all the relevant documents and disclose information. Depending on the facts and circumstances of a case, any notice without disclosing any fact or particulars for which information or documents are required will be in violation of the principles of natural justice and may be struck down as illegal and without jurisdiction.

36. Section 9 read with the SOPs clearly bring out the intent of the Act that call up notice must at the bare minimum specify the information regarding the alleged commission of the offence of money laundering and the details of the property which has allegedly been acquired from the proceeds of crime or contravention of any provision of the Act. The notice which does not fulfill the afore-mentioned requirements cannot be termed as a valid notice under section 9 of the Act and by the terms of SOPs. It is,

however, important to emphasize that issuance of call up notice is just one facet of the investigation for the offence of money laundering. The finding of this Court is confined to the consequence of default in not providing the necessary information to the petitioners in the call up notices. This finding does not question the validity of the inquiry/investigation that has been initiated which shall not be affected in any manner whatsoever and which shall have no bearing on the material/information/evidence already collected by the investigating officer against the petitioners. This finding furthermore shall not be construed to impede the ongoing investigation against the petitioners that shall continue.

Whether the provisions of the Act cannot operate without framing Rules?

37. It was next argued by the petitioners that sections 43 and 44 of the Act authorize the Federal Government to frame Rules for effective implementation of the provisions of the Act. In this regard, reference was made to section 5(2)(a) of the Act which envisages the setting up of National Executive Committee by the Federal Government and provides for establishing of a General Committee to assist the National Executive Committee. The learned counsels also referred to various functions that the National Executive Committee must perform including advising the Federal Government to make rules for determination of offences that may be considered predicate offences and to make recommendations for combating money laundering and terror financing. According to the petitioners, the National Executive Committee plays a vital role in advising the Federal Government on a host of issues related to money laundering and that in the absence of any consultation by the Federal Government in this regard makes all the actions taken by the Directorate (I&I) for registration of FIRs and holding of inquiry null and void. While referring to section 9 of the Act, it was argued that no criteria has been framed for attachment and taking over the properties suspected to have been acquired from the proceeds of crime and for sale of perishable properties. It was added that the investigating officers in the absence of rules were holding roving inquiries into the cases and assuming jurisdiction at their whims. It was thus stated that the unbridled discretion being exercised by the investigating officer is required

to be structured in terms of the law laid down by the Hon'ble Supreme Court in the case of Amanullah Khan and others v. The Federal Government of Pakistan **PLD 1990 SC 1092**. The learned counsel also stated that this Court has the necessary power to direct the agencies to frame the Rules under the statutes.

38. The question required to be answered by this Court is whether the provisions of the Act are self-executory or whether the framing of Rules under section 43 of the Act is necessary to give effect to its provisions.

39. Before proceeding to answer this question, it is important to note that this Court is dealing with cases that are at the preliminary stage of inquiry and/or investigation. The challenge in all these petitions has been made either to the call up notices or the authority of the investigating officer to register FIRs. This Court will thus confine the findings on this issue to the facts presented before it and no more. At the cost of repetition, it may be stated that the investigative process is triggered when FMU receives STRs and CTRs from the reporting agencies and analyses the same. FMU has the power to call for the record and information from any agency or person. After analyzing STRs and CTRs, FMU then proceeds to disseminate the necessary information and material to the concerned investigating or prosecuting agency for inquiry. The starting point for the engagement of the investigating officer under section 8 is receipt of the said report from the investigating or prosecuting agency whereupon he is required to provisionally attach the property, with the prior permission of the court, which he *reasonably believes* to be the property involved in money laundering. This belief can only exist based on information or material which is sufficient to give rise to such a belief in the mind of a reasonable person. This information or material, however, need not satisfy the standards applicable to admissibility of evidence and that is why vast powers are conferred by the Act for further investigation of the matter. The investigating officer is required to forward a copy of the attachment order and the report to the head of the concerned investigating agency in a sealed envelope within forty-eight hours. The investigating officer shall then serve a notice on the person concerned requiring him to provide his sources of income, earning or assets from which he acquired the property and the evidence on which he

relies and other relevant information and particulars and to show cause why all or any of such properties be not declared to be the properties involved in money laundering and forfeited to the Federal Government. Finally, the investigating officer shall by taking into account the reply to the notice and all relevant material placed on record and after granting hearing to the concerned person record a finding as to whether all or any other of the properties in respect of which notice was issued are properties involved in money laundering. The investigating officer after making the second determination that the property is involved in money laundering shall apply to the court seeking an order confirming the attachment of the property. The court, after giving opportunity of hearing to the concerned person, may pass an order confirming the attachment, retention, seizure or as the case may be, release of the property. The investigating officer after confirmation of the attachment order is required to forthwith take over the possession of the attached property and if the property seized is perishable in nature or subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, he may apply to the court which may order immediate sale of the property in any manner deemed appropriate in the circumstances. These steps in the inquiry/investigation as envisaged by sections 6, 8 and 9 are exhaustive and are not dependent on the rules. It may relevantly be pointed out that where the legislature intends that rules are required to be framed for a certain function under the statute to be performed or carried out, it makes provision for it by requiring it to be done through the prescribed manner. The term "*prescribed*" is defined in section 2(xxvii) of the Act to mean prescribed by rules and regulations under the Act. For the investigative processes to be carried out by the investigating officer under sections 8 and 9 relating to attachment, the legislature did not stipulate that these functions be further regulated and guided by rule making. This fact alone restrains the hands of this Court in issuing any direction for framing the rules.

40. The process provided in sections 8 and 9 of the Act for initiation of proceedings by the investigating officer for attachment on the face of it is committed to the principles of natural justice. By providing an independent forum of the court as the final arbiter for attachment (provisional and final)

of the property, the Act strikes a balance between the rights of the individuals and the aspirations the Act seeks to achieve by putting a curb on the menace of money laundering. The processes contemplated by the Act are comprehensive and provide sufficient and detailed guidelines to the investigating officer as well as the person to whom notice under section 9 is issued for proceeding with the investigation.

41. At the direction of this Court, the Directorate (I&I) submitted a report according to which a number of meetings of the National Executive Committee have taken place and that the following Rules have been framed.

- i. Referral Rules 2021
- ii. Forfeited Properties Management Rules 2021
- iii. High Risk Jurisdiction Rules 2021
- iv. Anti Money Laundering Regulations 2014

42. Be that as it may, the perusal of the SOPs demonstrate that the Directorate (I&I) has devised a meticulous and exhaustive mechanism for processing the reports received from the FMU and the follow-up measures the investigating officer is required to adhere and that National Executive Committee was guiding it on a score of issues. Office Order dated 19.11.2020 (SOP) under the heading “*Effective Investigation / Prosecution / Seizure & Confiscation of Assets*” mentions the following steps relating to inquiry that the investigating or prosecuting agencies/investigating officers must observe.

1) In all cases where FIs/STRs/CTRs are received from FMU, the investigation (inquiry analysis and verification of facts) must demonstrate the true potential of the case for predicate offence/ML proceedings. The steps for desk analysis may include verification of facts, desk audit of Income tax and sales tax /FED returns, wealth statements, market and field intelligence, complaints, news items, audit reports, information etc., apart from summoning the accused person(s) and gathering third party information to this effect.

2) In the event where the concerned officer, with recorded observations, recommends disposal of STR without initiation of AML proceedings, the concerned Additional Director shall forward the said recommendation to the Director along with his/her self-contained note/observations to that effect. And where the concerned Director approves such recommendations, the Director shall record reason(s)/observations for such disposal based on the criteria i.e. predicate offences, laid down for ML cases.

3) It should be noted that the investigation report compiled under the relevant tax law/statute shall result either in:

- i. Sharing of Investigation/Contravention Report to the concerned Tax Offices, or
- ii. Red Alerts, or
- iii. Closure of Case / Proceedings to be dropped, under intimation to Director General of Intelligence and Investigation-Inland Revenue who if required may re-open the proceedings at any time with the reason recorded in writing; or
- iv. Proceedings to be initiated under AMLA, 2010.

4) If warranted, the Director shall approve the compiled investigation report prepared by the concerned officer (AD/DD/Addl. Dir./IO) for initiation of proceedings under AMLA 2010 on the basis of recommendations of the concerned officers in addition to giving consideration to the following factors:

- a. Availability of the evidence — domestic or international;
- b. Value of the assets identified as POC;
- c. Compliance level (Tax statutes) of the accused
- d. Risk factors-areas prone to tax evasion/ML (geographical, sectorial (Business sector), NPOs/Trusts, PEP etc.)
- e. Transaction with related or unrelated parties
- f. Resource costs required to investigate the POC or ML offence;
- g. Strengths and weaknesses of the case
- h. Likelihood of a successful prosecution.

5) In this respect, for effective ML investigation the IO shall explore and access the widest possible range of financial, administrative and law enforcement information, including open or public sources, and information collected and/or maintained by other departments and organizations for conducting ML and financial investigations; and

6) Expeditiously identify money or other moveable and immovable properties owned or controlled, wholly or partly, directly or indirectly, by the accused persons or organization during the course of investigations for necessary freezing, seizure or that is, or may become, subject to confiscation or is suspected of being proceeds of crime under the law.

Similarly, Office Order dated 19.11.2020 (SOP) under the heading “*Procedure in ML Investigation under AMLA 2010*” again stipulates the

process to be adopted in investigation.

After the case is finally approved for ML proceedings and assigned to the IO nominated under AMLA 2010 by the Competent Authority, the following procedure shall be followed:

1. With assignment of the case to the IO, the provisions of AML Act shall be invoked and information from other departments/organizations/persons/entities shall be sought under AMLA 2010 for collecting further evidence, if required, and making a strong ML case establishing the link between the tax evasion and any assets which is believed to be the proceed of crime.....
2. After institution of FIR and commencement of investigation proceedings under AMLA 2010, the IO shall apply under section 8 of AMLA 2010 to the concerned Special Court for attachment of the assets under investigation, on provisional basis. After the approval of court, IO will issue Attachment Order in respect of assets/properties suspected to have been involved in or derived through money laundering for a period of 180 days. Copies of Attachment Order and report shall be forwarded to Director General of Intelligence and Investigation-Inland Revenue within 48 hours in a sealed envelope.
3. The IO shall, not later than seven days from the date of Order of Attachment made under sub section (1) of section 8, serve a notice of not less than thirty days on the accused person in accordance with section 9 of the AMI.A, 2010.
4. Prior administrative approval of the concerned Director shall be obtained before seeking permission of the concerned court in respect of Survey under section 13 and Search & seizure under section 14 of AMLA 2010. After obtaining permission of the court such survey, search and seizure shall be conducted in the manner provided under section 13 and section 14 respectively of the AMLA 2010.

43. The above excerpts have selectively been taken from the SOPs contained in Office Orders dated 19.11.2020 and 05.03.2021 as these were directly related to the issues involved herein. The SOPs otherwise lay down detailed procedures and guidelines touching upon every aspect of the matter starting from the receipt of information from FMU to the investigative

processes under the Act. The process for the inquiry/investigation under the Act and the SOPs is expansive and envisages a rigorous and intrusive regime that does not warrant any further guidance to the investigating officers through Rules. The SOPs are otherwise consistent with the provisions of the Ordinance and the Directorate (I&I) can frame these in-house rules for conducting investigation of the offence of money laundering. This Court is satisfied on the reading of sections 8 and 9 of the Act that rules are neither necessary nor inevitable for carrying out the functions of the investigating and prosecuting agencies and that the non-framing of rules does not impair the functions of the investigating officers in any manner. Even otherwise, it was held in the case of M.A.U. Khan v. Rana M. Sultan and another **PLD 1974 SC 228** that the omission to frame the necessary rules and regulations by the designated authority “...cannot be construed as having the effect of rendering the statute nugatory and unworkable. Such an eventuality could arise only if the Legislature indicates an inaction to this effect in clear and unmistakable terms.” It follows that, to the extent that the petitioners’ case is premised on demonstrating that without framing Rules in terms of section 43 of the Act the Directorate (I&I) cannot proceed to investigate or inquire into the allegation of money laundering, their case must fail.

44. It was also alleged that the investigating officers were treating the matter as one of audit under the Income Tax Ordinance and were thus conducting a roving inquiry. There is no substance in this contention. The investigation is being carried out for the offence of money laundering with which the proceeds of crime has a positive correlation. A person is said to have committed the offence of money laundering if he indulges in any of the matters covered in section 3 of the Act relating to property derived from proceeds of crime through commission of a predicate offence. The offences which has been made predicate in all the cases before this Court stem out of the Income Tax Ordinance. The Directorate (I&I) is the investigating agency which is part of Federal Board of Revenue and is expected to have expertise in such like matters. In any event, information gathering during inquiry/investigation is a legitimate part of the Act to ascertain whether the acquisition of the property by the person concerned is connected with the proceeds of crime/offence of money laundering. As per section 9 of the Act,

the petitioners are duty bound to demonstrate before the investigating officer that the property is not derived from the proceeds of crime and is not involved in the offence of money laundering. The Act grants vast powers to the investigating officers to hold inquiry into the matter relating to the commission of the offence of money laundering. This Court at the stage of inquiry/investigation under the Act cannot constrain the investigating officers of their authority and powers under its Constitutional jurisdiction. It has repeatedly been held that the High Court has no power of supervision or control over the investigating agencies. Reference in this regard may be made to the cases of M.S. Khawaja v. The State PLD 1965 SC 287 and Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Balochistan PLD 1971 SC 677. This principle is so well-entrenched in our jurisprudence that it cannot be cast aside lightly. In the case of Director, Central Bureau of Investigation v. Niyamavedi 1995 AIR SCW 2212, the Indian Supreme Court made the following important observations restraining the Courts from interfering in the ongoing investigation.

Ordinarily, the Court should refrain from interfering at a premature stage of the investigation as that may derail the investigation and demoralise the investigation. Of late, the tendency to interference in the investigation is on the increase and Courts should be wary of its possible consequences.....

This Court is thus not prepared to hinder in any manner whatsoever the investigation/inquiry being conducted by the Investigating officers for which they have the necessary authority and power under the Act.

Can the Directorate (I&I) register an FIR against a person under the Act?

45. The petitions mentioned in Schedule A are covered by the determination of this Court on this issue.

46. The petitioners maintain that the Directorate (I&I) has no authority and jurisdiction under the Act to register FIR against them under the Act. In support of this proposition, the petitioners rely upon the provisions of section 21 of the Act. The petitioners maintain that clause (a) of sub-section (1) of section 21, which makes every offence under the Act to be cognizable, is subject to sub-section (2) which provision stipulates that the special court shall not take cognizance of any offence punishable under section 4 except

on a complaint in writing made by the investigating officer. As a corollary, it is submitted that the only course open to the Directorate (I&I) is to obtain prior permission of the special court to enter upon investigation under the Act and to register the FIR. It is also argued that the Directorate (I&I) is obliged to file a complaint before the special court in case it is established during the investigation that an offence of money laundering has been committed. The respondents, on the other hand, contend that the expression “*complaint*” as contained in sub-section (2) of section 21 has no nexus with the complaint contemplated by of the Code and should be read as the report under section 173 of the Code

47. On a plain reading of section 21, there does exist an element of inconsistency or tension between the clear mandate of sub-section (1)(a) that makes all the offences as cognizable and the general language of sub-section (2) that requires cognizance by the special court on a *complaint* by the investigating officer. The resolution of this inconsistency necessarily involves a determination of the scope of the term “*complaint*” visualized by sub-section (2).

48. While interpreting the provisions of section 21 of the Act, it is of relevance to this case to note that originally section 21 (1)(a) made all the offences under the Act as non-cognizable. By virtue of the amendment made in section 21 on 24.09.2020 through the Anti-Money Laundering (Second Amendment) Act, 2020, the word “*non-cognizable*” was substituted by “*cognizable*”. The effect of this amendment cannot be overemphasized as it clearly brings into play the unmistakable intent of the legislature to change the law. This provision must now be construed in its amended form which makes all the offences under the Act as cognizable.

49. The effect of amendment in the case of Pakistan Tobacco Co. Limited v. Karachi Municipal Corporation PLD 1967 SC 241 was stated as under by the Hon’ble Supreme Court:-

The conscious deletion of the provisions contained in section 93 of the section 96 of the Act of 1933, relating to the imposition of terminal tax, and its deliberate exclusion from the Third Schedule, appended to the Ordinance, clearly manifests an intention on the part of the law-giver to exclude the terminal tax from the category of taxes which can be levied by a municipal authority functioning under the Ordinance. A legislature is deemed to be aware of the previous state of the law and

if knowing this it makes a change when repealing it and reenacting some of its provisions the intention is clearly to effect a change. It follows, therefore, that the previous provisions relating to the imposition of a terminal tax were deliberately removed to denude the Municipal Authorities of this power.

Similarly, in the case of S. Zafar Ijaz v. Chairman Steel Mills Corporation 1998 PLC (C.S.) 777, it was held that:

Further, when phraseology of the law is changed by an amendment the presumption will be that some change in the law is intended. It is an ordinary rule of construction that a change of language in the same of the Code or Act may be presented to indicate a change of intention on the part of the Legislature.

50. The petitioners' construction for treating the offence of money laundering as non-cognizable would render the amendment made in section 21(1)(a) superfluous and redundant and would result in an irrational dichotomy. Such an intention cannot be attributed to the legislature particularly in view of plain and ordinary meaning of the provision in question.

51. The contention of the respondents that the complaint contemplated by section 21 (2) is in fact the report under section 173 of the Code, which in common vernacular is often referred to as challan, is supported by ratio laid down by this Court in numerous judgements. In this regard, reference may be made to the judgment reported as Manzoor Ahmad Akhtar v. The Special Judge Central, Lahore another PLD 1995 Lahore 1. In this case the provisions of Emigration Ordinance, 1979 came up for interpretation before this Court. While construing section 6 of the said Ordinance, which is a *pari materia* provision with sub-section (2) of section 21 of the Act, it was held that:

6. According to section 4(1) of the Cr. P.C. the words and expression in this Code have the following meaning, unless a different intention appears from the subject or context. This means that the definition of the complaint given in Code is expressly restricted to the Code and to no other law, even if it be partaking of the subject covered by the Cr. P.C. Therefore, there is no compulsion in the Code that the definition of complaint be read in the Ordinance. An examination of the Ordinance reveals that even in this legislation, there is no compulsion and none can be culled, to follow the definition of the word given in the Code. On this analysis the submission of the learned counsel that the definition of complaint as given in the Code

be read, can safely be overruled. After this overruling, the further argument that cognizance of the offence on police reports by the Special Judges in these cases is invalid, loses its weight inasmuch as meaning of the complaint given in various dictionaries (as seen above) does not rule out the report of a police officer. A report or a writing of a police officer would be and is as much a complaint as that of any other officer or even of a citizen written on a bare piece of paper.

This Court in the case of Rafi Ahmed and others v. Special Judge Central, Lahore and another **PLD 2010 Lahore 692** followed the dictum laid down in the judgment reported as **PLD 1995 Lahore 1**.

52. Similarly, a learned Division Bench of the Peshawar High Court in the case of Said Bakhshad v. the State **PLD 2020 Peshawar 129** interpreted the provisions of Khyber Pakhtunkhwa Prohibition of Interest on Private Loan Act, 2016 by holding as follows:

The word “complaint” has therefore been used in its etymological meaning and shall be defined according to its normal English usage and not as a complaint as defined in Section ‘2’ Clause ‘h’ of the Cr.P.C.

53. On proper construction of the provision coupled with the law laid down in the judgments noted above, it becomes apparent that the term “*complaint*” mentioned in sub-section (2) of section 21 of the Act is not the same complaint as contemplated by the Code in section 202 rather it is in the nature of report/challan to be filed by the investigating/prosecuting agency in terms of section 173 of the Code before the appropriate court. So understood, there is no apparent contradiction between the provisions of sub-sections (1) (a) and (2) of section 21 of the Act. A natural corollary to this interpretation is the affirmation of the proposition that FIR can be registered by the investigating officer under the Act against the petitioners if in his opinion a case for money laundering is made out.

54. The settled rule of harmonious construction also dictates that these provisions be construed such that as between two or more reasonable constructions of their terms that which will save them should prevail. It is a generally accepted canon that the statute must be read as a whole to ascertain the meaning of its various provisions and that the courts must interpret the offending provisions in such a manner so as to give effect to each of them. Against these generally accepted legal principles is the proposition that sub-section (1) of section 21 be read subject to sub-section

(2) with the result that all the offences under the Act be construed as non-cognizable. The identification of sub-section (1) (a) of section 21 making the offences under the Act as cognizable and sub-section (2) contemplating a report under section 173 of the Code would render a natural reconciliation of the two provisions particularly when viewed in the context of the amendment made in section 21(1)(a) through the Anti-Money Laundering (Second Amendment) Act, 2020. The result of the line of argument put forward by the petitioners, if accepted, would thwart the clear mandate of the amended sub-section (1)(a) of section 21 which makes every offence under the Act as cognizable.

55. The investigation of a cognizable offence or a non-cognizable offence has reference to the procedure which does not affect the substantive rights of the accused. It is settled law that a litigant has a vested right in substantive law but no such right exists in procedural law. Many judgments can be found to support the proposition that amendment made in a law relating to procedure shall have retrospective effect and shall apply to all pending matters (see The Commissioner of Income Tax v. Asbestos Cement Industries Limited 1993 SCMR 1276).

56. The petitioners also alleged that in some cases FIRs were registered without making a *prima facie* determination regarding the guilt or otherwise of the petitioners. In response to this allegation, it was submitted by the respondents that the necessity for registering the FIR arose as the petitioners in pursuance of the notice issued to them under section 9 of the Act did not come forward to file reply thereto or to furnish the evidence as required by law to substantiate that the alleged property acquired by them was not connected with the proceeds of crime.

57. Section 22 (1) of the Act states that the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to arrest, bail, bonds, search, seizure, attachment, forfeiture, confiscation, investigation, prosecution and all other proceedings under this Act. It may relevantly be pointed out that the investigative processes prescribed by the provisions of sections 8 and 9 of the Act are closely connected with the attachment of the property involved in the offence of money laundering. The procedure so provided is distinct and separate that bears no resemblance

with the procedure envisaged by of the Code. At this juncture, reference may also be made to section 5(2) of the Code which provides for trial of offences under special/other laws by stipulating as follows.

All offences under any other law shall be investigated, enquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Similarly, section 39 (1) states that the provisions of the Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. The Act, therefore, excludes the operation of the Code to the extent of procedure provided by it in relation to attachment of the property of the person concerned. Apart from the process for attachment of the property, the Act itself does not provide for any procedure for registration of FIR against the petitioners and thus by virtue of section 22(1) of the Act the procedure provided by the Code shall apply.

58. The principal objective of FIR is to set the law in motion for initiation of investigation by the police officer for the purposes of collecting evidence relating to crime. The Hon'ble Supreme Court in the case of Muhammad Bashir v. Station House Officer Okara Cantt. etc **PLD 2007 SC 539** has laid down the principles relating to the scope of FIR by holding as follows.

27. The conclusions that we draw from the above, rather lengthy discussion, on the subject of F.I.R., are as under:

- (a) no authority vested with an Officer Incharge of a Police Station or with anyone else to refuse to record an F.I.R., where the information conveyed, disclosed the commission of a cognizable offence.
- (b) no authority vested with an Office Incharge of a Police Station or with any one else to hold any inquiry into the correctness or otherwise of the information which is conveyed to the S.H.O. for the purposes of recording of an F.I.R.
- (c) any F.I.R. registered after such an exercise i.e. determination of the truth or falsity of the information conveyed to the S.H.O., would get hit by the provisions of section 162 Cr. P.C.

- (d) existence of an F.I.R. is no condition precedent for holding of an investigation nor is the same a prerequisite for the arrest of a person concerned with the commission of a cognizable offence.
- (e) nor does the recording of an F.I.R. mean that the S.H.O. or a police officer deputed by him was obliged to investigate the case or to go through the whole length of investigation of the case mentioned therein or that any accused person nominated therein must be arrested.

59. The afore-mentioned principles also apply with equal force to the FIRs registered under the Act. The SOPs formulated by the Directorate (I&I) also provide that with assignment of case to the investigating officer FIR shall be lodged with the prior administrative approval of the concerned Director. The following excerpt of Office Order dated 19.11.2020 (SOP) stipulates the procedure to be adopted by the investigating officer after assignment of case to him.

1.ML being cognizable offence, FIR shall be lodged by the IO with the prior administrative approval of the concerned Director. The same shall be intimated to the Director General of Intelligence and Investigation-Inland Revenue immediately for information.
2.
3.
4.
5. After registration of FIR, if arrest of accused is required for the purpose of ML investigation, IO will seek prior administrative approval of the concerned Director.
6. And in case of arrest of the concerned person, relevant provisions of Cr. PC, 1898 shall be followed by the IO. For the sake of clarity, it is added that lodging of FIR initiates the process of criminal investigation in case of a cognizable offence which is followed by arrest of the person as well as attachment of property and search of premises etc., after obtaining permission from the competent court if so required, followed by completion of investigation and submission of challan under section 173 Cr. PC, 1898, after which the accused is charged sheeted and the criminal trial begins which after recording of evidence culminates in conviction or acquittal.
7. Once, the IO completes his investigation, he will submit final report before the Special Court, confirming the attachment of

asset which is believed to be proceed of crime. Section 9 of AML Act governs the investigation process and submission of final report. If the trial culminates in confiscation of asset, than the said assets shall be managed as per Section 11 of AMLA 2010 read with Anti Money Laundering Rules 2008 issued vide SRO 05(KE)/2009 dated 22 November 2008.

60. It is observed that in many cases FIRs were registered after issuance of notices under section 9 of the Act to the petitioners and that the FIRs in question on the face of it mention all the details that in the opinion of the investigating officer make out a case for money laundering. It may also be mentioned that in none of the cases before this Court the investigating officers made any efforts to arrest the petitioners.

61. The offence of money laundering being cognizable, there is no bar on the investigating officer under the law to lodge the FIR even at the initial stage of receiving the report from the Directorate (I&I). The investigating officer is also empowered to lodge the FIR once he makes any of the two requisite determinations in terms of sections 8 and 9 of the Act. In view of the nature of the offence of money laundering, the investigating officer is not precluded from holding an inquiry into the matter even after registration of the FIR.

62. In the case of Adamjee Insurance Company Limited v. Assistant Director, Economic Enquiry Wing 1989 P.Cr.L.J. 1921 in which a learned Division Bench of Sindh High Court was dealing with the issue as to whether the Federal Investigating Agency could initiate investigation/inquiry without first recording the FIR. The relevant findings of the learned Division bench are as under:

14. We are inclined to hold that the fact that the respondent has not recorded the F.I.R., upon the receipt of written complaint containing allegation of commission of a cognizable offence, does not render the initiation of the inquiry as illegal. We are in respectful agreement with the view expressed in the above cited Privy Council case namely, that an investigation may commence even without recording F.I.R. We may also point out that subsection (1) of section 5 refers to two terms i.e. 'inquiry' or 'investigation'. The use of the two terms in the above subsection indicates that they cannot have two different meanings. In our view inquiry can be termed as the first step towards investigation.

63. The approach which a court should adopt in deciding the constitutional petitions for quashing of FIRs was identified and explained in the case of Col. Shah Sadiq v. Muhammad Ashiq and others **2006 SCMR 276** as under.

7. It is also a settled proposition of law that if prima facie an offence has been committed, ordinary course of trial before the Court should not be allowed to be deflected by resorting to constitutional jurisdiction of High Court. By accepting the constitutional petition the High Court erred in law to short circuit the normal procedure of law as provided under Cr.P.C and police rules while exercising equitable jurisdiction which is not in consonance with the law laid down by this Court in A. Habib Ahmad Vs. M.K.G. Scott Christian PLD 1992 SC 353. The learned High Court had quashed the F.I.R. in such a manner as if the respondent had filed an appeal before the High Court against order passed by the trial Court. The learned High Court had no jurisdiction to quash the impugned F.I.R. by appreciation of the documents produced by the parties without providing chance to cross-examine or confronting the documents in question. Respondents had alternative remedy to raise objection at the time of framing the charge against them by the trial Court or at the time of final disposal of the trial after recording the evidence. Even otherwise, respondents have more than one alternative remedies before the trial Court under the Cr.P.C i.e. section 265-K, 249-A or to approach the concerned Magistrate for cancellation of the case under provisions of Cr.P.C. The respondents have following alternative remedies under Cr.P.C:

- (a) To appear before the Investigating Officer to prove their innocence.
- (b) To approach the competent higher authorities of the Investigating Officer having powers vide section 551 of Cr.P.C.
- (c) After completion of the investigation, the Investigating Officer has to submit case to the concerned Magistrate and the Magistrate concerned has power to discharge them under section 63 of the Cr.P.C in case of their innocence.
- (d) In case he finds the respondents innocent, he would refuse to take cognizance of the matter.
- (e) Rule 24.7 of the Police Rules of 1934 makes a provision for cancellation of cases during the course of investigation under the orders of concerned Magistrate.
- (f) There are then remedies which are available to accused persons who claim to be innocent and who can seek

relief without going through the entire length of investigations.

The Hon'ble Supreme Court went to hold that

9. According to provisions of Cr.P.C. it is for the Investigating Officer to collect all the facts connected with the commission of offence and if he finds that no offence is committed, he may submit a report under section 173, Cr.P.C. to the Allaqa Magistrate. On the other hand, if on the basis of his investigation he is of the opinion that the offence has in fact been committed, he has to submit report accordingly. However, the report of the Investigating Officer cannot be the evidence in the case. The investigation is held with a view to ascertaining whether or not an offence has been committed. The inquiry, or trial, as the case may be has to be conducted by the Magistrate. If the police is restrained from investigating the matter, their statutory duty, it will in our opinion be tantamount to acting against the law as held in Kh. Nazir Ahmad's case AIR 1945 PC. P.18. The relevant observation is as follows:

“Just as it is essential that everyone accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in the matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police under section 154 and 156 to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would as their Lordship think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court under section 561-A. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the Court to intervene in an appropriate case when moved under section 491, Criminal Procedure Code, to give direction in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then.”

10. This Court has reconsidered and approved the aforesaid judgment in Shahnaz Begum's case PLD 1971 SC 677 and again reconsidered and approved in Brig. Imtiaz's case 1994 SCMR 2142.

64. It thus follows that the investigating officer is empowered to register FIR against the petitioners under the Act and that inquiry/investigation can

be carried out after registration of the FIR under the Act particularly when the person to whom notice under section 9 of the Act has been issued is not forthcoming in providing the information to the investigating officer.

Whether the Directorate (I&I) can inquire into and investigate transactions that existed prior to inclusion of Income Tax Ordinance in the Schedule of the Act?

65. In substance, the petitioners maintain that the properties that were acquired before sections 192, 192A, 194 and 199 of the Income Tax Ordinance became predicate offences by virtue of their inclusion in Schedule-I of the Act do not come within the purview of the Directorate (I&I) for the reason that the Act has no retrospective operation.

66. It is a generally accepted principle of constitutional law that there is no prohibition on the Parliament to make retrospective legislation particularly where such an intention is expressly or impliedly clear from the text of the statute. In legislation creating penal consequences in respect of actions that occurred in the past, however, an exception is created by Article 12 of the Constitution which deals with protection against retrospective punishment and states that no law shall authorize the punishment of a person for an act that was not punishable by law at the time of the act or for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed. It has already been stated that one of the purposes of the Act is to prevent money laundering and to attach/confiscate the properties generated from the proceeds of crime. The offence of money laundering, as noted above, is correlated with the proceeds of crime which has its genesis in the predicate offence. The commission of a predicate offence is a prerequisite for proceedings under the Act to commence before the court. In other words, the proceeds of crime can only materialize once a predicate offence is committed. The Act is a penal statute and, therefore, it can have no retrospective operation by virtue of Article 12 of the Constitution. Based on this, any proceedings commenced under the Act cannot sustain in respect of a transaction which crystallized prior to the introduction of sections 192, 192A, 194 and 199 of the Income Tax Ordinance as predicate offences through amendment made in Schedule-I of the Act on 20.05.2016. This

proposition was also accepted by the Hon'ble Supreme Court in *Qazi Faez Isa's* case. Notwithstanding the broad parameters of this principle, it must, however, be emphasized that the punishment prescribed for the offence under the Act does not relate to the commission of the predicate offence rather it is the offence of laundering that has been made punishable. As such, the date of the commission of the predicate offence is not material. The offence of money laundering that can be proceeded under the Act must be committed after the Act came into force or inclusion of the predicate offence in Schedule-I. The question whether any person is in possession of any property derived from the proceeds of crime is, however, a question of fact. The offence of money laundering, as is apparent from its definition given in section 3 of the Act, has been expressed in broad terms embracing and enumerating several scenarios. The definition is intended to be broad as the Act must take into account a range of possibilities. This is underscored by the definition of "*property involved in money laundering*" contained in section 2 (xxxix) of the Act which means proceeds of crime, property derived or obtained directly or indirectly from the offence of money laundering and property used or intended to be used in commission of the offence of money laundering, a predicate offence or a foreign serious offence regardless of who holds or has held the property. After the provisional attachment order of the property, which is passed ex-parte, the person concerned is issued the notice under section 9 who might very well be able to persuade the investigating officer to change his opinion that the property attached does not fall in any of the classes enumerated in section 3 of the Act and is not involved in money laundering or that the property was acquired prior to the inclusion of the predicate offence in Schedule-I of the Act. This Court at the present stage shall, therefore, not attempt to resolve the issue whether the properties involved in each case were acquired prior to coming into force of the Act or whether in the given facts and circumstances of the case the offence of money laundering has not been made out. The Act reserves with the investigating officer the power to form an opinion regarding the occurrence of the offence of money laundering after going through the material before him including evidence to the contrary, if any, furnished by the person concerned. Any order by this Court touching upon the subject

matter would tantamount to usurping the powers and authority of the investigating officer. This Court has already cited the judgment of the Hon'ble Supreme Court in the case of *Col. Shah Sadiq* (2006 SCMR 276) which forbids the Courts to interfere in the statutory duty of the officers investigating the cognizable offences. Similarly, the abstract proposition put forward by the petitioners that transactions entered into prior to insertion of the offences under the Income Tax Ordinance in Schedule-I of the Act are protected by Article 12 of the Constitution has already been answered in affirmative by this Court. Their stance that the investigating officers are proceeding with the cases by retrospectively applying the provisions of the Act cannot be accepted at the stage when the cases are either being inquired into or investigated and no final decision has been made. In the opinion of this Court, the investigating officers should be allowed to carry out the investigation to make their determination based on the facts of each case that emerge during the course of investigative process.

Whether action under the Act cannot be initiated without prior adjudication of the predicate offence?

67. The petitioners allege that without first determining the guilt of the accused under the predicate offence, the proceedings under the Act cannot be initiated.

68. Explanation II to section 3 of the Act answers to that contention by stipulating that for the purposes of proving an offence under the said provision, the conviction of an accused for the respective predicate offence shall not be required. In view of the clear language of the statutory text, it would be implausible to come to any conclusion other than that a prior conviction of an accused for the predicate offence is not a necessary prerequisite for initiation of proceedings under the Act. This position appears to have been accepted by the majority judgment in the case of *Justice Qazi Faez Isa's* case when it set its seal of approval on such interpretation.

69. From the reading of the text of Explanation II and other provisions of the Act, it appears that a mere allegation of commission of predicate offence shall suffice for registration of FIR and initiation of inquiry/investigation under the Act and that neither a finding of guilt nor a sentence imposed on

the petitioners in respect of a predicate offence is required.

70. The petitioners also add that there are certain pre-requisites in relation to the predicate offences and till such time a determination is made in respect thereof the proceedings under the Act cannot move forward and FIRs cannot be registered. It is also contended that these determinations cannot be made by the investigating officer. A reference in this regard was made to section 192A and section 111 of the Income Tax Ordinance which are mentioned in Schedule-I of the Act as predicate offences. Schedule-I furthermore stipulates, it was argued, that these offences can only be investigated for the purposes of the Act if the tax sought to be evaded is more than Ten Million Rupee or more.

71. The Directorate (I&I) is the “*investigating and prosecuting agency*” under the Act for the purposes of investigating the offence of money laundering. Even so, it has the necessary expertise, being part of Federal Board of Revenue, to investigate matters underlying the offence of money laundering including the fact that the tax sought to be evaded is Ten Million or more. The offence of money laundering is intrinsically linked to and dependent upon the predicate offence and, therefore, any investigation must necessarily be conducted also in respect of the latter by the investigating officer under the Act. The submissions made by the petitioners in this behalf are thus not tenable. Similarly, the issue with regard to the registration of FIRs has already been dealt above by holding that the investigating officer can register the same after receiving report from the FMU. In the opinion of this Court, this issue is also pre-mature and shall only assume significance once the case is referred to the special court for trial after completion of investigation under the Act which trial shall be held presumably alongside the trial of predicate offence under the provisions of Income Tax Ordinance pursuant to the provisions of section 203 of the Income Tax Ordinance after finalization of the investigation of the predicate offence by the officials of the income tax department which may very well be Directorate (I&I). It may be added that the predicate offences mentioned in Schedule-I of the Act in relation to the Income Tax Ordinance are all compoundable. In case an accused compounds the predicate offence, the trial of offence of money laundering shall nevertheless continue and be decided on its own merits. In

such an eventuality, it shall not be necessary for both the trials to be held simultaneously.

72. The learned counsels for the petitioners also contend that Explanation II to section 3 will render sections 2(xxvi), 2(xxviii), 2(xxxi) and 9(5) of the Act as redundant. The proviso to section 20 of the Act, it was argued, makes it necessary for holding of trials in the same court in order to avoid multiplicity of proceedings. It was also submitted that there must be some evidence before the Directorate (I&I) of the connection between the allegation of money laundering and the predicate offence.

73. In so far as the contentions relate to the trial of the offence of the money laundering or the conduct of investigation, this Court is not prepared to render any findings thereon for the simple reason that the matter before the investigating officer has not yet been concluded or finalized for collecting evidence and information connecting the petitioners to the offence of money laundering. Suffice it to state that the provisions contained in sub-section (5) of section 9 are not in any manner inconsistent with Explanation II to section 3 of the Act. The plain meaning of sub-section (5) of section 9 is that the attachment of the property shall cease to have effect if on conclusion of trials for both the offence of money laundering and predicate offence the person concerned is acquitted. This provision *prima facie* indicates that both the trials might be held simultaneously. Whether a joint trial is required to be held for both the offence of money laundering and the predicate offence or separate but parallel trials ought to be held are all premature questions that shall be determined before the special court at the appropriate time if the case goes to the trial. At the stage of inquiry, however, it is apparent from the text of section 8 that it shall be unnecessary for the investigating officer to conclusively make the determination that the property relates to proceeds of crime or that the predicate offence has in fact been committed. It shall be sufficient for the investigating officer to proceed if he "*reasonably believes*" that the property is linked to the offence of money laundering. It is for the petitioners to demonstrate before the investigating officer that the property or the transaction in question does not fulfill the parameters of the predicate offence or that the amount involved therein is less than Ten Million Rupee. All the petitions before this Court are

at the stage of inquiry/investigation and as such it is a pre-mature submission on the part of the petitioners.

What is the effect of civil/departmental proceedings in relation to transactions that are subject matter of the notices issued by the Directorate (I&I)?

74. The petitioners during the arguments only made a passing reference to the fact that the transactions that are subject matter of the impugned notices have been the subject of the departmental proceedings in respect of which adjudication has taken place and that appeals/references are pending adjudication before various forums.

75. The petitioners in regard to the allegation made before this Court on this issue have not appended any proof that such matters have conclusively been determined in their favour in departmental proceedings and as such this Court is not in a position to render any findings thereon. If, however, such is the case, the petitioners should place all the material before the investigating officer enabling him to make his decision as to whether the case for the offence of money laundering is proceedable or not.

76. At this stage, a reference to the case of *Radheshyam Kejriwal v. State of West Bengal and another* (2011) 3 SCC 581 may be made wherein the Indian Supreme Court laid down the law which relates to the fate of criminal proceedings on the basis of termination of civil proceedings on similar facts. The following are the pertinent excerpts from the judgment.

26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case.....

31. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case.

After reviewing various judgments, the Indian Supreme Court picked up the ratio of those decisions by stating in paragraph 38 as follows.

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- (vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

The Indian Supreme Court finally drew the following conclusion.

39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.

77. It is reiterated that Explanation II to section 3 simply states that the conviction of an accused for the predicate offence is not a necessary proof required for establishing an offence of money laundering. Where the departmental proceedings and the proceedings under the Act arise out of the same transaction or on the same set of facts, the fate of the former proceedings might impact the latter particularly when they have been terminated on merits in favour of the accused and the said decision has attained finality. This Court, however, does not wish to express a final view

on this proposition which was not the subject of a full argument and which, in any event, is a pre-mature submission in the present proceedings. It is for the petitioners to place the necessary information and material before the investigating officer for dropping the proceedings against them in case departmental proceedings on same facts as have been alleged against them in the notice under section 9 have conclusively been decided in their favour.

Whether the investigating officers are conducting proceedings in a manner humiliating to the petitioners?

78. It was also agitated before this Court that the Directorate (I&I) in the garb of inquiry/investigation were humiliating the petitioners and that in some cases hearing notices were issued to the entire board of directors of companies without specifying as to what was required of them and that were required to wait for long hours outside the offices of the investigating officers.

79. The law with regard to the notices to be served on the accused persons by the investigating agencies is by now well settled. In the case of Ghulam Hussain Baloch and another v. National Accountability Bureau etc **PLD 2007 Karachi 469**, a learned Division bench of the Sindh High Court laid down the following principles.

- (a) While calling any person for the purposes of investigation, he must be informed about the facts, allegation, offence, the name of the accused, specified matter, if any, enabling him to furnish the requisite information to the investigating officer.
- (b) If the information required from the person can be furnished through any mode which serves the purpose then the person should not be called to appear in person.
- (c) If a person is indeed required to appear in person, the notice should mention the date, time and place of his appearance and the date, time and departure from the place to which he is being summoned in terms of Chapter XXV of Police Rules, 1934 and all such orders shall be attached with the case diary which is mandatorily required to be maintained by the investigating officers under Rules 25.54

and 25.55 of Police Rules, 1934.

Although the above case related to National Accountability Bureau Ordinance, 1999, the principles laid down therein are fully applicable to the cases under the Act.

80. Similarly, a learned bench of this Court in the case of Ghulam Muhammad Vs. Secretary Housing, etc **2018 CLC 176** held as under:

Firstly, a notice to be valid must satisfy at least four requirements, that is, (i) it must state the act complained of attracting adverse action; (ii) it must state the action proposed to be taken; (iii) it must state the source of power under which the action is proposed to be taken; and, (iv) it must prescribe the date, time and place of hearing and the period within which the reply may be filed [see *Ambika Devi v State of Bihar and Ors* AIR 1988 Pat 258]

81. Although the Act lays down a specific procedure for investigation, the investigating officers ought to be aware of their duty which is to collect evidence, material and information from the persons suspected of having committed the offence of money laundering. The Hon'ble Supreme Court in the case of Muhammad Idress and another v. The State etc **2021 SCMR 612** (Crl. Petition 742-L of 2019) stated the following principles with respect to the investigation by the police.

5. The opinion of a Police Officer who has investigated the case as to the guilt or innocence of an accused person is not a relevant fact, and is therefore not admissible, under the Qanun-e-Shahadat Order, 1984; as he is not an "expert" within the meaning of that term as used in Article 59 of the Qanun-e-Shadat Order, 1984. Even the Criminal Procedure Code (Cr.P.C) does not authorize him to form such an opinion. To determine guilt or innocence of an accused person alleged to be involved in the commission of an offence is a judicial function that can only be performed by a court of law.....An investigation, as defined in Section 4(1)(l) of the Cr.P.C, includes all proceedings under the Cr.P.C for the collection of evidence conducted by a Police Officer.....

82. The well-established principles propounded in the above judgment are also applicable to the investigation by the investigating officer under the Act. It may be pointed out that the determinations made by the investigating officer regarding the property being generated from the proceeds of crime are for the purposes of attachment thereof although FIRs can be registered on that basis. The guilt or otherwise of the person suspected to have committed the offence of money laundering falls within the province of the

court. Be that as it may, notwithstanding the broad and wide powers reserved for FMU and investigating or prosecuting agencies for verification of the connection of the property with proceeds of crime prior to the issuance of notice under section 9, it is apparent that the scope of inquiry/investigation does not come to an end thereafter and the investigating officer retains the jurisdiction to further investigate the matter after receiving the reply of the person concerned. This Court has no desire to hamper the said process by laying down standards through judicial *fiat* when broad powers are available to the investigating officers together with collaterally connected and attendant procedures stipulated in sections 9A, 13, 14 and 15 of the Act. This, however, does not absolve the investigating officers of their obligation for treating the concerned persons with respect and dignity that Article 14 of the Constitution requires from them or to demonstrate strict compliance with the guidelines laid down in the judgment rendered in the case of *Ghulam Hussain Baloch*.

83. As noted in paragraph 4 above, the petitions mentioned in Schedule D were filed by persons/entities who have been summoned under section 160 of the Code as witnesses to furnish record/information in relation to FIRs registered against third parties. These petitioners have agitated the same law points raised by the petitioners to whom notices under section 9 have been issued or against whom FIRs have been registered. In the considered opinion of this Court, these petitioners lack the standing to file these petitions as they are not aggrieved by the investigations initiated against third parties. Their petitions are thus liable to be dismissed.

84. Similarly, the petitions included in Schedule B pertain to notices in which the requisite information has been given. These petitions are also liable to be dismissed for the reason mentioned above.

85. For the above reasons and discussion, it is decided as under:

- (i) the writ petitions mentioned in Schedule C are **allowed** and the notices impugned therein are set aside for being without lawful authority and of no legal effect. The record/evidence/information already collected by the Directorate (I&I)/investigating officer in these cases during investigation can be utilized in case fresh notices

are issued.

- (ii) the present writ petition and the writ petitions, the details whereof are mentioned in Schedules A, B and D are **dismissed**.
- (iii) The Directorate (I&I) and the investigating officers are directed to strictly adhere to the law laid down in judgments reported as Ghulam Hussain Baloch and another v. National Accountability Bureau etc **PLD 2007 Karachi 469** and Ghulam Muhammad Vs. Secretary Housing, etc. **2018 CLC 176** during the investigation process.
- (iv) No order as to costs.

(Shams Mehmood Mirza)
Judge

Announced in open Court on **02.09.2022**.

(Shams Mehmood Mirza)
Judge

Approved for Reporting.

(Shams Mehmood Mirza)
Judge