

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-5162 of 2020

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Mahmood A. Khan

Bursshane LPG (Pakistan) Ltd.,
Petitioner No.1

Saifee Zakiuddin,
Petitioner No.3

: Mr. Mushtaq Hussain Qazi,
Advocate for the Petitioners No.1&3.

Asad Alam Niazi,
Petitioner No.2

Hamdia Fatin Niazi,
Petitioner No.4

: Mr. Amer Raza Naqvi, Advocate for
the Petitioners No.2&4.

..Vs..

Federation of Pakistan
through Secretary / Chairman
Revenue Division/
Federal Board of Revenue
Respondent No.1

Court of Special Judge
(Customs, Taxation and
Anti-Smuggling)
Respondent No.2

: Mr. Kafeel Ahmed Abbasi, D.A.G
for Respondents No.1&2.

The Director General
Intelligence and Investigation
(Inland Revenue)
Respondent No.3.

: Mr. Sarfaraz Ali Metlo, Advocate
for the Respondent No.3.

The Director
Intelligence and Investigation
(Inland Revenue)
Respondent No.4

:

The Deputy Director
Intelligence and Investigation
(Inland Revenue)
Respondent No.5

: Mr. Ghulam Asghar Pathan,
Advocate for the Respondents
No.4 & 5.

Date of hearing : 27.04.2022, 18.05.2022, 25.05.2022
& 31.05.2022

Date of decision : 18.06.2022

JUDGEMENT

Irfan Saadat Khan, J. The instant petition has been filed on the grounds that the complaint No.945/2020 dated 31.08.2020 and the proceedings emanating from it may be declared illegal and unlawful. Moreover, the jurisdiction of the respondent No.2 was also challenged in the instant petition.

2. Briefly stated the facts of the case are that the petitioner No.1 is a listed public limited company, duly registered with the Stock Exchange. The petitioners No.2, 3 and 4 are its directors. That a complaint bearing No.945/2020 dated 31.08.2020 (hereinafter referred to as "**Complaint**") was filed under Sections 192, 192A and 203 of the Income Tax Ordinance, 2001 (hereinafter referred to as "**Ordinance 2001**") read with Sections 3, 4, 8 20, 21, 22 of the Anti-Money Laundering Act, 2010 (hereinafter referred to as "**AMLA**"). Thereafter the respondent No.2 took cognizance of the said complaint in Case No.192/2020 against the petitioners, under the above referred provisions of law. In the instant petition, the petitioners have not only challenged the said complaint and its proceedings but also the jurisdiction of the respondent No.2 in proceeding with the matter. That this Court vide order dated 22.10.2020 issued pre-admission notice to the respondents as well as to the DAG and has also directed the respondents not to take coercive action against the petitioners. The petitioners however were directed to cooperate with the prosecution and attend the trial court.

3. Mr. Mushtaq Hussain Qazi, Advocate has appeared on behalf of the petitioners No.1 and 3 and stated that not only the complaint is illegal but the proceedings emanating therefrom are also illegal and unlawful. He stated that the respondent No.2 has no jurisdiction to proceed with the complaint in case No.192/2020. While elaborating his view point, he has stated that the respondent No.2 has been given the authority by the FBR, through official gazette, to deal with the matters falling under Sections 192, 192A, 194 and 199 of the Ordinance 2001. He stated that the respondent No.5 while dealing with the complaint has no jurisdiction to act as an investigating officer as, according to him, vide SRO 611(1)/2016 dated 09.06.2016 it is only the Directorate General, who can investigate the matter but not the Director I&I-IR. He stated that since the very authority exercised by the respondent No.5 was illegal, therefore these proceedings are non-est in the eyes of law, hence the same may be declared as illegal and void.

4. He next stated that as per sub-section 2 of section 203 of the Ordinance, only a Special Judge, can take cognizance of the matter with regard to the complaint, therefore, the cognizance taken by the Respondent No.5 in the matter is illegal. He further stated that under AMLA only "proceeds of crime" could be taken up by a Court having special jurisdiction, whereas, in the instant matter it is not yet proved by the Department, FIA or any other authority that the amounts, as mentioned in the complaint amounting to Rs.1.775 billion, were either proceeds of the crime or the amount gained by the petitioners' company or its Directors by way of Anti-Money Laundering. He stated that under the circumstances the decisions given by the Hon'ble Supreme Court of Pakistan in the case of *Justice Qazi Faez Isa and others ...Vs... The President of Pakistan and others (PLD 2021 SC 1)* and by the High Court in *Govind Ram*

..Vs.. The Federation of Pakistan through Secretary Finance and 2 others (2022 PTD 634) are squarely applicable. According to Mr. Qazi in the case of Govind Ram (*supra*), this High Court has categorically defined when AMLA proceedings could be initiated which parameters, in his view, are lacking in the instant matter. Learned counsel has further relied upon the decisions given in the cases of;

- i. *Multiline Associates ..Vs.. Ardeshir Cowasjee and 2 others (PLD 1995 SC 423)*
- ii. *Land Acquisition Collector and 6 others ..Vs.. Muhammad Nawaz and 6 others (PLD 2010 SC 745)*
- iii. *Messrs WAK Limited Multan Road, Lahore..Vs.. Collector Central Excise and Sales Tax, Lahore (Now Commissioner Inland Revenue, LTU, Lahore) and others (2018 SCMR 1474).*
- iv. *Muhammad Aamir Khan ..Vs.. Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue, KP and others (2019 PLC (C.S) 1014 SC).*

Mr. Qazi further submitted that since the Respondents' lack jurisdiction to proceed with the complaint therefore, this petition may be allowed by declaring the action as illegal, uncalled for and without jurisdiction.

5. In the alternative, Mr. Mushtaq Qazi, stated that the accounts of the company are being regularly audited and the company and the directors are being assessed as a taxpayer since the last a number of years and there is no complaint against the petitioner company or its Director with regard to any concealment of income etc., hence, the present proceedings initiated by way of an illegal complaint and that of alleged money laundering is illegal, as according to him neither any income or tax has been concealed nor evaded.

6. Mr. Amir Raza Naqvi, Advocate has appeared on behalf of the Petitioners No.2 & 4 and stated that in the complaint only permission to investigate the matter was obtained hence the complaint could not be considered as an FIR against the petitioners and its Directors, therefore, in his view the Trial Court has no jurisdiction either to register a case or to proceed against the petitioners and its Directors. He stated that since there was no proper legal complaint against the petitioner and its Director therefore proceedings initiated by the Trial Court are illegal. He further stated that the essence of AMLA is provided under Sections, 3 & 4 of the said Act, which parameters have not been fulfilled in the instant matter. He stated that in a case of identical nature before Islamabad High Court, bearing Petition No.3195 of 2021, FIR was quashed. However, in the instant matter, according to Mr. Naqvi, since there was neither an FIR nor a report under Section 173 Cr.P.C therefore, this case is on better footing than the matter decided by the Islamabad High Court.

7. The learned counsel then placed reliance on the decision given in the case of *Waris MEAH's* reported as *PLD 1957 SC 157*. He stated that since in the Income Tax Ordinance, no penal consequence of criminal nature have been provided, if there is any money laundering or tax evasion of Rs.10 million or above, therefore, according to him, the tax department has no jurisdiction to make a complaint of money laundering against the petitioner company and its Directors, which in his view is the jurisdiction of AMLA only. He stated that if parameters, as enshrined in the case of *Waris MEAH's*, are considered which according to him are fully applicable in the present matter, the case of the department would crumble to the ground. He stated that Article 10 and 10-A of the Constitution protect the rights, liberty and fair trial of the citizen

and placed reliance on the decision given in the case reported as *Muhammad Iqbal Khan Noori and another ..Vs.. National Accountability Bureau (NAB) and others (PLD 2021 SC 916)*. He stated that there is no complaint against the company or the Directors with regard to incorrect or inaccurate submission of the statutory requirements before the SECP also, who is the regulator of the company affairs. He in the end stated that in view of the above legal deficiencies the petition may be allowed by quashing the proceedings of the complaint, as initiated by the Respondents.

8. Mr. Sarfaraz Ali Metlo, Advocate has appeared on behalf of the Respondent No.3, who while taking the lead on behalf of the Respondents counsel, at the very outset, stated that instant petition is not maintainable. He stated since the matter is pending adjudication before the Trial Court and the petitioners are duly appearing before the said Court from where they have also obtained the bail, hence they may be directed to keep appearing before the said Trial Court and join the trial and if they are found innocent they would be acquitted by the Trial Court. Hence the instant petition, in his view, is premature and not maintainable; therefore, the same may be dismissed. He stated that Article 199 of the Constitution only comes into the picture when there is no other adequate remedy is available with a person, however, in the instant matter when an adequate remedy is available to the petitioner, by agitating the matter before the Trial Court in accordance with law therefore, filing of the present petition is unwarranted which may accordingly be dismissed with heavy cost.

9. Mr. Metlo stated that if the petitioners are innocent they can file application under Section 265-K Cr.P.C for their acquittal before the Trial Court, which would be considered in accordance with law. He stated that filing of this petition in his view is

uncalled for and therefore, this petition may be dismissed. In support thereto the learned counsel has placed reliance on the decision given in the case reported as *Muhammad Farooq ..Vs.. Ahmed Nawaz Jagirani and others* (**PLD 2016 SC 55**).

10. Without prejudice to the above, the learned counsel stated that as per proviso (a) to section 20 read with section 2(X) of the AMLA; if an adverse order is passed by the Trial Court the petitioners have the remedy to file an appeal before the High Court. He stated that AMLA being special law has an overriding effect over the Ordinance, 2001, therefore, it could not be said that the petitioners either have no remedy or that they would not be given a fair trial before the concerned Court. He stated that it is a settled proposition of law that criminal matters are not amenable in a writ petition since the same requires detailed deliberation, lengthy arguments, recording of evidence and examination of witnesses, etc., which could not be done in a writ petition, therefore, in his view a petition cannot be considered to be a substitute of the trial, therefore, the petitioners may be directed to join the trial and to assert whatever they want before the concerned Court. In support thereof the learned counsel has placed reliance on the decisions given in the case reported as *Mir Shakil ur Rehman ..Vs.. Messrs Creek Developers (Private) Limited and another* (**PLD 2019 Sindh 670**), *Bashir Ahmed ..Vs.. Zafar-ul-Islam and others* (**PLD 2004 SC 298**), *President, All Pakistan Women Association, Peshawar Cantt., ..Vs.. Muhammad Akbar Awan and others* (**2020 SCMR 260**) and *Mohtarma Benazir Bhutto, M.N.A. and Leader of the Opposition, Bilawal House, Karachi ..Vs.. The State* (**1999 SCMR 1447**).

11. Mr. Metlo, further stated that on identical issue the petitioner previously filed a petition bearing CP No.D-4602 of 2020 which was dismissed with cost directing the petitioners to join the

trial. He therefore, stated that filing of this petition on the same grounds is firstly misconceived and secondly is squarely hit by the principle of res-judicata. He therefore, stated that this petition therefore needs to be dismissed with heavy cost.

12. Mr. Metlo, next stated that reading of the Income Ordinance, 2001 clearly reveals that in respect of matters which concerns evasion of taxes over Rs.10 million or above, the same is refer-able to be dealt with under Special Law namely AMLA, therefore, according to him arguments of Mr. Qazi, that the Income Tax Department has no jurisdiction to deal with such type of matters is incorrect. He stated even the SROs and the notifications presented by Mr. Qazi, in fact supports his viewpoint rather than the view taken by Mr. Qazi. He stated that it is the Directorate General Office, which has been given the jurisdiction to evaluate such type of matters, which has rightly been done by the concerned Directorate. He stated that AMLA has an overriding effect over Income Tax Ordinance, therefore, there could not be a question of either overlapping of jurisdiction between the Tax Department or the Special Court as in the matters that where tax evasion is detected Rs.10 million or above, the same are refer-able to a Special Judge, as has been done in the instant matter, therefore, there could be no question of any wrongful assumption of jurisdiction by the Income Tax Department. In support thereof the learned counsel has placed reliance on the decisions given in the case reported as *Dr. Sikandar Ali Mohi ud Din ..Vs.. Station House Officer and others (2021 SCMR 1486)*, *Federation of Pakistan through General Manager/Operation Pakistan Railways, Headquarters Office, Lahore and others ..Vs.. Shah Muhammad (2021 SCMR 1249)*.

13. Mr. Metlo, next stated that the contention of Mr. Qazi that there is neither any money laundering nor tax evasion involved in the instant matter, he stated that it is quite premature to utter any word in this regard as this matter is subjudice before the trial Court, hence it cannot be said that neither any tax evasion nor any money laundering has been established against the petitioners company or its Directors as investigation is underway and only after full-fledged trial it could be said whether there was any money laundering tax evasion involved in the instant matter or not, therefore, according to him this argument of Mr. Qazi is misconceived and premature.

14. Mr. Metlo next stated if the matter, which is being adjudicated upon by the trial Court, is examined it could be seen that the trial Court after considering complaint has come to the conclusion that prima facie a case of an offence triable by the said Court has been made out and only after that cognizance in the matter was taken in accordance with law. Mr. Metlo explained that at no point of time either Mr. Qazi, or Mr. Naqvi, have stated that opportunity of hearing has not been provided by the trial Court while proceeding with the matter. According to him ample opportunity is being provided by the trial Court to the petitioners to put up their defense, therefore, the trial Court may be allowed to proceed with the matter in accordance with law. According to Mr. Metlo, filing of the instant petition is nothing but creating hindrance/hurdles in the fair trial by the petitioners, who appears to be afraid of the proceedings being conducted before the trial Court.

15. He next stated that the argument of Mr. Qazi, with regard to some TV programs and some personal observations etc., are also not worth consideration. He stated that each law deals with the

circumstances mentioned therein. He stated that some laws are commons laws and some are special and some laws are more special. According to him though in fact Ordinance is a special law but AMLA is a more special law than the Ordinance, 2001, as it deals with specialized type of cases. He stated that the case of Waris MEAH's deals with the proposition that the Central Government has the jurisdiction to choose how and in what manner to proceed, if dealing with different type of laws, whereas in the instant matter, it is only the AMLA, which deals with the money laundering or tax evasion cases above Rs.10 million, hence according to him Waris MEAH's case relied upon by Mr. Naqvi doesn't help his case rather supports the view point of the department.

16. Mr. Metlo, stated that whether the trial Court has issued NBW rightly or wrongly, as objected by Mr. Naqvi, doesn't require adjudication by this Court in a writ jurisdiction and in support of his contention placed reliance on the case reported as *Shoaib Ahmed Shaikh and 2 others ..Vs.. Federation of Pakistan through Secretary and others (PLD 2016 Sindh 607)*. He next stated that the decisions relied upon by Mr. Qazi and Mr. Naqvi are distinguishable from the facts of the instant matter. He stated that SECP has no role in the instant matter as this is a matter between petitioners and the AMLA. He next stated that reliance on the decision of Justice Qazi Faez Isa, is also misplaced, which deals with the peculiar facts and circumstances of that case. He finally stated that the instant petition being misconceived and not maintainable may accordingly be dismissed.

17. Mr. Kafeel Ahmed Abbasi, has appeared on behalf of Respondents No.1 & 2 and has adopted the arguments of Mr. Sarfaraz Ali Metlo, Advocate.

18. Mr. Ghulam Asghar Pathan, Advocate has appeared on behalf of Respondents No.4 & 5 and has stated that the petition is not maintainable as the same has been filed without exhausting the remedy available to the petitioners under Sections 265-K and 249-A Cr.P.C. Mr. Pathan, next stated that AMLA is not discriminatory as it deals with the specialized situations as provided under Section 39 of the said law. According to him AMLA has an overriding effect on other laws and it doesn't create any hindrance or impediment on other laws including Income Tax Ordinance, 2001. He stated that the purpose with each AMLA was introduced was to curb the menace of money laundering and to deal with the matters of tax evasion of Rs.10 million or above. Hence, according to him the assumption of jurisdiction by the AMLA authorities was in accordance with the law. He next stated that it is provided under AMLA that it would deal with the matters falling under Section 192, 192A, 194, 199 of the Ordinance, if referred by the Department. According to him, if the intention of the legislature was to saddle the Income Tax Department to deal with money laundering cases the present law would not have been introduced in 2010, which shows that AMLA deals with special matters falling under its jurisdiction. Hence, according to the learned counsel the assertion of Mr. Qazi and Mr. Naqvi, with regard to lack of jurisdiction of AMLA and that of the Respondents No.2 & 5 is misconceived and is liable to be repelled.

19. Mr. Pathan, next stated that the Investigating or Prosecuting Agencies have been defined under Section 2(xviii) of the AMLA and the parameters, as provided in the above referred section, have duly been met in the instant matter. He stated that under identical circumstances, a Division Bench of this Court in the case of *Govind Ram (supra)* has categorically observed that the matters of

AML are to be dealt with the concerned authorities rather than any other authority. He stated that perusal of said law also clearly shows that when there is “*reasonable believe that a property is proceeds of crime*” AMLA is applicable. He states that in the instant matter a “reasonable believe” has been found after receipt of credible information that petitioners were involved in tax evasion or money laundering over and above Rs.10 million, therefore, the proceedings were rightly initiated and according to him there is neither any jurisdictional defect nor the proceedings are coram non iudice, as suggested by Mr. Qazi and Mr. Naqvi. In support thereof the learned counsel has placed reliance on the decision given in the case reported as *Shoaib Ahmed Shaikh and 2 others ..Vs.. Federation of Pakistan through Secretary and others (PLD 2016 Sindh 607)*.

20. Mr. Pathan, next stated that in the instant matter onus is upon the petitioners to prove that the complaint with regard to the amounts which were evaded were not proceeds of crime, which could only be proved before the Trial Court after leading of evidence and producing necessary required details and documents. He stated that record shows that the petitioners did not cooperate with the auditors, who inquired into the matter, with the result that the auditors have categorically submitted that they cannot give any opinion as the petitioners have not disclosed true facts to them and thereafter have given up their assignment or stopped working with the petitioners. He next stated that in a writ petition bearing CP No.D-1184/2021, before the Islamabad High Court, money laundering has been defined and if the parameters of the present case are examined, it could be seen that this case squarely falls under money laundering rightly triable by the Special Judge dealing with AML matters. Learned counsel in this regards placed

reliance on the decision given in the case of *Slackness in the progress of pending Enquiries relating to fake Bank Accounts etc.* (**2018 SCMR 1851**). He next stated that it is only the Court dealing with the AML matters which has the jurisdiction to deal with such type of case, which has rightly been exercised by the said Court, the Petitioners therefore, may be directed to join the trial in accordance with law.

21. Mr. Pathan, stated that without prejudice to his above submissions, as per his information the petitioners are not joining the trial and are creating hindrance/hurdles by agitating that their matter is pending before the High Court. According to him the High Court has categorically directed the petitioners to join the trial. He stated that if the petitioners join the trial and furnish the details and documents, as required by the trial Court, the matter would be concluded in a short span of time.

22. The learned counsel next stated that if the facts of the present matter are examined, it could be seen that the accusation of tax evasion or money laundering has been leveled by none else but by an Ex-Director of the Company, who was fully conversant with the matter and has furnished a number of documents to prove tax evasion or money laundering by the present Directors. He stated that he would not go into further details since the matter is subjudice before the trial Court but stated that the averments or accusation made by the Ex-Director namely Mr. Etrat Hussain Rizvi requires thorough investigation and inquiry, which could only be done by the trial court in accordance with law. He therefore, in the end stated that in the light of these facts and circumstances the instant petition is without any merit which is liable to be dismissed with heavy cost.

23. We have heard all the learned counsel at considerable length and have perused the record, the law, the decisions relied upon by them and have also made research on our own in the instant matter as well.

24. Before proceeding any further, we deem it appropriate to reproduce relevant provisions of law relied upon by the learned counsel for the petitioners as well as by the Respondents:-

The Anti-money Laundering Act, 2010.

Section 2(x) “Court” means the Court specified under section 20;

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).

4. Punishment for money laundering.— (1) Whoever commits the offence of money laundering shall be punished with rigorous imprisonment for a term which shall not be less than one year but may extend upto ten years and shall also be liable to fine which may extend upto twenty-five million rupees and shall also be liable to forfeiture of property involved in money laundering or property of corresponding value.

(2) The fine under sub-section (1) may extend upto one hundred million rupees in case of a legal person. Any director, officer or employee of such legal person who is also found guilty under this section shall also be punishable as provided under sub-section (1).

8. Attachment of property involved in money laundering.—(1) An investigating officer may, on the basis of the report in his possession received from the concerned

investigating or prosecuting agency, by order in writing, with prior permission of the Court, provisionally attach a property, which he reasonably believes to be the property involved in money laundering for a period not exceeding one hundred and eighty days from the date of the order;

Provided that the Court may grant further extension for a period up to one hundred and eighty days.

(2) The investigating officer shall, within forty-eight hours immediately after attachment under sub-section (1), forward a copy of the order and the report referred to in that sub-section to the head of the concerned investigating agency in a sealed envelope.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of the finding made under sub-section (2) of section 9 whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.— For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The investigating officer who provisionally attaches any property under sub-section (1) shall submit to the Court monthly report of the progress made in the investigation.

20. Jurisdiction.—(1) The Court of Sessions established under the Code of Criminal Procedure, 1898 (V of 1898) shall, within its territorial jurisdiction, exercise jurisdiction to try and adjudicate the offences punishable under this Act and all matters provided in, related to or arising from this Act:

Provided,—

(a) where the predicate offence is triable by any court other than the Court of Session, the offence of money laundering and all matters connected therewith or incidental thereto shall be tried by the Court trying the predicate offence; and

(b) where the predicate offence is triable by any court inferior to the Court of Session, such predicate offence, the offence money laundering and all matters connected therewith or incidental thereto shall be tried by the Court of Session.

21. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in 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) no person accused of an offence punishable under this Act for a term of imprisonment of more than three years shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given due notice; and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(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:

Provided that where the person accused is a reporting entity, the investigating officer or any other authorized officer, as the case may be shall, before filing such complaint, seek the approval of the concerned AML/CFT regulatory authority which shall not withhold its decision for a period exceeding sixty days.

(3) The Court shall not take cognizance of any offence punishable under sub-section (1) of section 33 except upon a complaint in writing made by the FMU or investigating or prosecuting agency.

(4) The power and discretion on granting of bail specified in clause (b) of sub-section (1) are in addition to the power and discretion under the Code of Criminal Procedure, 1898 (Act V of 1898), or any other law for the time being in force on granting of bail.

22. Application of Code of Criminal Procedure, 1898 (Act V of 1898) to proceedings before Courts.—(1) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) 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.

(2) The Federal Government may appoint a person who is an advocate of a High Court to be a Public Prosecutor on such terms and conditions as may be determined by it and any person so appointed shall be competent to conduct proceedings under this Act before a Court and, if so directed by the Federal Government, to withdraw such proceedings:

Provided that a person shall not be qualified to be appointed as a Public Prosecutor under this section unless he has been in active practice as an Advocate for not less than seven years in the High Court;

Provided that an advocate who has been appointed as prosecutor by the investigating or prosecuting agencies shall be qualified to be appointed as Public Prosecutor under this section notwithstanding the requirements of the first proviso.

(3) Every person appointed as a Public Prosecutor under this section shall be deemed to be a public prosecutor within the meaning of clause (t) of sub section (1) of section 4 of the Code of Criminal Procedure, 1898 (Act V of 1898), and the provisions of that Code shall have effect accordingly.

(4) When a Prosecutor appointed under sub-section (1), is, for any reason, temporarily unable to conduct proceedings before the Court, the proceedings shall be conducted by such person as may be authorized in this behalf by the Court.

24. Appointment of investigating officers and their powers.—(1) The investigating or prosecuting agencies may nominate such persons as they think fit to be the investigating officers under this Act from amongst their officers.

(2) The Federal Government may, by special or general order, empower an officer not below BPS-18 of the Federal Government or of a Provincial Government to act as an investigating officer under this Act.

(3) Where any person other than a Federal or Provincial Government Officer is appointed as an investigating officer, the Federal Government shall also determine the terms and conditions of his appointment.

(4) Subject to such conditions and limitations as the Federal Government may impose an investigating officer may exercise the powers and discharge the duties conferred or imposed on him under this Act.

Income Tax Ordinance, 2001.

S.192. Prosecution for false statement in verification. — Any person who makes a statement in any verification in any return or other document furnished under this Ordinance which is false and which the person knows or believes to be false, or does not believe to be true, the person shall commit an offence punishable on conviction with a fine ⁴[upto hundred thousand rupees] or imprisonment for a term not exceeding three years, or both.

192A. Prosecution for concealment of income.— (1) Where, in the course of any proceedings under this Ordinance, any person has either in the said proceedings or in any earlier proceedings concealed income or furnished inaccurate particulars of such income and revenue impact of such concealment or furnishing of inaccurate particulars of such income is five hundred thousand rupees or more shall

commit an offence punishable on conviction with imprisonment upto two years or with fine or both.

(2) For the purposes of sub-section (1), concealment of income or the furnishing of inaccurate particulars of income shall include—

(a) the suppression of any income or amount chargeable to tax;

(b) the claiming of any deduction for any expenditure not actually incurred; or

(c) any act referred to in sub-section (1) of section 111.]

S.194. Prosecution for improper use of National Tax Number [Certificate].— A person who knowingly or recklessly uses a false National Tax Number 4 [Certificate] including the National Tax Number [Certificate] of another person on a return or other document prescribed or used for the purposes of this Ordinance shall commit an offence punishable with a fine [not exceeding fifty thousand rupees] or imprisonment for a term not exceeding two years, or both.

199. Prosecution for abetment. — Where a person [knowingly and willfully] aids, abets, assists, incites or induces another person to commit an offence under this Ordinance, the first-mentioned person shall commit an offence punishable on conviction with a fine or imprisonment for a term not exceeding three years, or both.

203. Trial by Special Judge.— [(1) The Federal Government may, by notification in the official Gazette, appoint as many Special Judges as it may consider necessary, and where it appoints more than one Special Judge, it shall specify in the notification the territorial limits within which each of them shall exercise jurisdiction,

[Provided that the Federal Government may, by notification in official Gazette, declare that a Special Judge appointed under section 185 of the Customs Act 1969 (IV of 1969) shall have jurisdiction to try offences under this Ordinance.]

[(1A) A Special Judge shall be a person who is or has been a Sessions Judge and shall, on appointment, have the jurisdiction to try exclusively an offence punishable under this Part other than an offence referred to in section 198.

(1B) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), except those of Chapter XXXVIII, thereof shall apply to the proceedings of the court of a Special Judge and, for the purposes of the said provisions, the court of Special Judge shall be deemed to be a Court of Sessions trying cases, and a person conducting prosecution before the court of a Special Judge shall be deemed to be a Public Prosecutor.]

(2) A Special Judge shall take cognizance of, and have jurisdiction to try, an offence triable under sub-section (1) only upon a complaint in writing made by the Commissioner.

(3) The Federal Government may, by order in writing, direct the transfer, at any stage of the trial, of any case from the court of one Special Judge to the court of another Special Judge for disposal, whenever it appears to the Federal Government that such transfer shall promote the ends of justice or tend to the general convenience of parties or witnesses.

(4) In respect of a case transferred to a Special Judge by virtue of sub-section (1) or under sub-section (3), such Judge shall not, by reason of the said transfer, be bound to recall and record again any witness who has given evidence in the case before the transfer and may act on the evidence already recorded by or produced before the court which tried the case before the transfer.]

[230. Directorate General (Intelligence and Investigation), Inland Revenue.— (1) The Directorate General (Intelligence and Investigation) Inland Revenue shall consist of a Director General and as many Directors, Additional Directors, Deputy Directors and Assistant Directors and such other officers as the Board, may by notification in the official Gazette, appoint.

(2) The Board may, by notification in the official Gazette,—

- (a) specify the functions and jurisdiction of the Directorate General and its officers; and
- (b) confer the powers of authorities specified in section 207 upon the Directorate General and its officers.]

25. The AMLA provides prevention of money laundering. The Court which deals with the money laundering has been defined under Section 20 of AMLA, reproduced supra, which defines that the Court of Session established under the Code of Criminal Procedure, within its territorial jurisdiction, shall adjudicate upon the offences punishable under the Act with the exceptions that where the “predicate offence” is triable by any Court other than the Court of Session, the offence of money laundering and all matters connected therewith shall be tried by the Court trying the predicate offence. The term “predicate offence” has been defined under Section 2(xxvi) of AMLA, as per which “predicate offence” means an offence specified in Schedule-I of the Act (AMLA). If Schedule-I of AMLA is examined, it would become evident that the matters falling under Sections 192, 192(a), 194 and 199 of the Ordinance

2001 are considered to be the predicate offences, meaning thereby that Anti-Money Laundering Court has the jurisdiction to deal with the matters concerning predicate offences and the above referred Sections of the Ordinance 2001 also fall within the ambit of predicate offences. If the term “proceeds of crime”, as defined under Section 2(xxviii) of AMLA, is examined it would be seen that the properties derived or obtained directly or indirectly by any person from the commission of predicate offence would be considered as “proceeds of crime”. The offences of money laundering have been defined under Section 3 supra, which categorically provides that a person shall be guilty of offence of money laundering, if the person acquires etc. a property by way of proceeds of crime. This shows that Section 3 of AMLA has a direct nexus with acquiring etc. of the property by way of proceeds of crime and in such type of situation the said offence is triable under Section 20 of AMLA by the Court defined under the said Section.

26. The above discussion would reveal that in the cases where a predicate offence has been committed or any property has been acquired etc. by way of proceeds of crime, the same is triable by the Court as defined under Section 20 of AMLA. Now if the facts of the present matter are examined, it would reveal that a complaint dated 20.05.2020 was received by the Directorate of Intelligence and Investigation Karachi against the petitioners with regard to tax evasion and money laundering and embezzlement of funds and fraudulent transfer of company's funds to personal accounts by the management of the company. Needless to explain that under Schedule-I of AMLA, where predicate offence has been defined, it has been mentioned that the matters of tax evasion as enumerated under Sections 192, 192A, 194 and 199 of the Ordinance 2001 squarely fall under the definition of predicate offences triable by

the competent Court as defined under Section 20 of AMLA. We will not make any comment with regard to the fact that whether the properties acquired etc. or other allegations with regard to embezzlement of funds or fraudulent transfer could be considered as proceeds of crime or not as the said matter is subjudice before the Court of Special Judge, Customs, Taxation, Anti-Smuggling and Money-Laundering, Karachi.

27. In the complaint it has categorically been mentioned that some investment amounting to Rs.240 million has been concealed and thereafter enquiry proceedings were initiated against the petitioners. It is an admitted position that when the external auditors were appointed to enquire into matter the petitioner and its Directors did not cooperate and the auditors left the job incomplete. From the enquiry and other investigation carried out by the concerned Directorate, since a tax evasion /money laundering over and above Rs.10 million was detected, only then the matter was investigated and thereafter a complaint was made to the concerned Court. It is also a matter of record that before investigation all the legal formalities with regard to obtaining permission etc. as required under Sections 21(1), 21(2) and 22 of AMLA read with Section 155 of the Cr.P.C. were sought from the concerned Court. The complaint clearly shows an extensive enquiry into the matter and it is only after thorough investigation that the concerned Court was requested to grant permission to investigate into the matter.

28. The record further shows that vide Notification dated 14.05.2016 an amendment was made in the Schedule of AMLA and after Section-XII, Section XIIA was added whereby the provisions of Sections 192, 192A, 194 and 199 were added in the definition of predicate offence. The record also reveals that before

proceeding against the petitioners all the formalities were completed by the concerned Directorate with regard to appointment of Investigating Officers, referring the matter to the concerned Court, appointment of District & Sessions Judge as Judge of Special Court Customs, Taxations, Anti-Smuggling and Money-Laundering for the province of Sindh. The record further reveals that the SROs and the Notifications, as pointed out by Mr. Qazi, do not show any lack of jurisdiction or wrongful assumption of jurisdiction by the concerned Directorate or non-fulfillment of any legal obligation with regard to assumption of jurisdiction either by the concerned Collectorate or by the concerned Judge. In our view AMLA is quite clear in this behalf dealing with the matters with regard to anti-money laundering, proceeds of crime and other matters with regard predicate offence as provided under the said law.

29. The decisions relied upon by Mr. Qazi and Mr. Naqvi are found to be distinguishable from the facts obtaining in the instant matter and we, therefore, are of the view that the assumption of jurisdiction by the Special Judge does not suffer from any illegality or irregularity. In the decision given in the case of Shoaib Ahmed Shaikh and 2 others supra the petition filed was dismissed by categorically observing that when the legislature has provided a complete mechanism for redressal of grievance of the petitioners invoking constitutional jurisdiction was premature. If the instant matter is examined, it would be seen that when the trial Court is proceeding with the matter and nothing has been said either by Mr. Qazi or Mr. Naqvi with regard to conclusion of a fair trial by the concerned Court, their stance with regard to very jurisdiction assumed by the concerned Court appears to be misconceived and not maintainable, hence declined. The trial Court may proceed

with the matter in accordance with law and conclude the trial within shortest possible time.

30. The decision relied upon by Mr. Naqvi in the case of Waris Meah again is found to be distinguishable from the facts obtaining in the instant matter, as this case clearly deals with the aspect with regard to the fact that under what manner, mode and method the government has jurisdiction to choose in the matter they want to proceed whereas in the instant matter, in our view, it is only Anti-Money Laundering Court which has the jurisdiction to deal with the matters concerning any money laundering falling under the definition of predicate offence or acquiring etc. of any property by way of proceeds of crime. Since the above referred aspects are yet to be determined, therefore, the petitioners are at liberty to proceed the matter before the trial Court in accordance with law by furnishing their defence and in case they are found innocent or not guilty it is needless to state that they would be acquitted by the concerned Court. So far as the aspect of filing application under Section 249-A and 265-K Cr.P.C. are concerned that is the prerogative of the petitioners and no comment in this regard is warranted.

31. In the decision given in the case of Syed Jawad Arshad Vs. Federation of Pakistan & others and other petitions (C.P. No.D-1083 of 2020 & other petitions) a Bench of this Court categorically observed that where the law empowers a Special Court to deal with the matter and if an order of that Special Court is further assailable in appeal /revision before the High Court, the adequate remedy with regard to the condition precedent as per Article 199 is not justified. As explained supra, in the instant matter also if the petitioners are aggrieved, they can file an appeal under Section 39 of AMLA before this Court. In the case of Govind Ram, mentioned

above, again a Bench of this Court while dealing with the matter of money laundering has observed that in case of an unexplained amount, which needs enquiry, until and unless explanation is forwarded by an assessee to the dissatisfaction of the officer concerned is to be examined under AMLA and the said petition was dismissed with an observation that the petitioner /assessee is directed to forward their reply along with documents and explanation to the department to reach to a just and fair conclusion. In the case of Muhammad Rafiq Vs. DG, FIA, Islamabad (W.P. No.1184/2021) the learned Single Judge, while explaining in detail the parameters of AML, has quite elaborately discussed the issue and thereafter reached to the conclusion that AMLA is a special law which deals with prevention of money laundering, combating financing of terrorism and forfeiture of property derived from or involved in money laundering and all offences, including predicate offence, as envisaged under Schedule-I of AMLA and such cases have to be tried under AMLA and the Courts as defined in AMLA are required to deal with such matter after giving proper opportunity of hearing to the accused. It was also observed that laws of Cr.P.C. are applicable to AMLA and whatever relief is sought in such like cases could only be obtained and granted by the specialized Court only and that AMLA has an overriding effect over other laws, being a special law. The learned Single Judge after exhaustive discussion on the subject dismissed the petition by observing that filing of petition for quashment of the FIR before the High Court was not legally justiciable.

32. It is a settled proposition of law that while exercising writ jurisdiction the matters concerning quashing of FIR and criminal issues are usually not amenable before the High Court. Reference may be made to the decision given in the case of Dr. Sikander Ali

Mohi ud Din, mentioned above. Perusal of AMLA also reveals that in case any adverse order is passed against a person that person has the remedy, under Section 23 of AMLA, to file an appeal before the High Court, hence it could not be said that the aggrieved persons are left remediless. The decision given in the case of Justice Qazi Faez Isa and others supra is also found to be quite distinguishable from the facts obtaining in the instant matter as that matter was with regard to the decision on the reference sent by the President of Pakistan to the Hon'ble Supreme Court. No doubt in the instant case the permission to investigate the matter was obtained, which was duly granted, and only thereafter enquiry /investigation of the matter was conducted, therefore, the argument of Mr. Naqvi that the complaint could not be considered to be an FIR does not hold field, whereas facts of the case clearly reveal that after getting proper permission from the concerned authorities, when tax evasion of more than Rs.10 million was detected /identified through enquiries, the matter was referred to the concerned Court hence in our view the said Court alone has the jurisdiction to deal with the matter and thereafter to reach to a just conclusion, in accordance with law, after thorough investigation, obtaining details/documents from the petitioners and prosecution sides, examining witnesses etc. after granting opportunity of hearing to the said persons Therefore, we do not agree with the contention raised by Mr. Naqvi with regard to this aspect.

33. Moreover, whether the assets acquired were proceeds of crime or not again is yet to be determined by the trial Court, therefore, on this aspect also we do not find any justification to interfere or to dilate upon the issue. We agree with the contention raised by Mr. Metlo that AMLA, being a special law, has an

overriding effect over the Ordinance 2001. Reference in this regard may be made to Section 39 of AMLA, which categorically provides that the provisions of the Act would have an overriding effect over other laws for the time being in force. In our view at present no comment, deliberation or decision is required in the instant matter with regard to the fact that whether there was any tax evasion or not, as the matter is subjudice before the trial Court hence no comment on this aspect also is required. The other aspects with regard to fulfillment of certain obligations by the SECP, TV programs etc. hardly need any deliberation.

34. The upshot of the above discussion is that we do not find any jurisdictional defect or wrongful assumption of jurisdiction by the concerned Court so as to whittle down the proceedings emanating from the complaint. The instant petition thus is found to be not maintainable, which stands dismissed along with the listed application(s), if any, with no order as to costs. Needless to state that all the averments made in the instant petition with regard to jurisdiction of the trial Court etc. and other grounds agitated in the instant petition, either with regard to tax evasion, proceeds of crime or that of predicate offence, would remain available to the petitioners to be agitated before the trial Court, who would conclude the trial through a speaking and well-reasoned order, strictly in accordance with law, after providing ample opportunity of hearing to the petitioners.

JUDGE

JUDGE