

**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Criminal Revision Application No. 135 of 2024**

**Present:**

**Justice Zafar Ahmed Rajput**  
**Justice Tasneem Sultana**

**Applicant** : Adnan son of Muhammad Ali, through  
Mr. Raj Ali Wahid Kunwar, Advocate.

**Respondent** : The State, through Mr. Asad Aftab  
Solangi, Special Prosecutor ANF.

**Date of hearing** : **23.05.2025**  
**Date of Order** : **23.05.2025**

**ORDER**

**TASNEEM SULTANA, J.** This Criminal Revision Application is directed against the order dated 16.08.2024 ("**impugned Order**") passed by the Special Court-III (C.N.S.), Karachi ("**Trial Court**") in Special Case No. 08 of 2024 (*old Case No.23 of 2024*), arisen out of FIR No. 26 of 2022, registered under Sections 6, 9(c) of the Control of Narcotic Substances Act ("**Act of 1997**") read with Sections 3 & 4 of the Anti-Money Laundering Act, 2010 ("**Act of 2010**") at P.S ANF-Clifton, Karachi, whereby the Trial Court declined the application filed by the applicant under Section 265-K, Cr.P.C.

**2.** Brief facts of the case are that, on 04.08.2022 at about 1915 hrs., in front of Abdullah Shah Ghazi Mazar, near Cafe Strada, Karachi, complainant Inspector Wajid Hussain of PS ANF-Clifton arrested the applicant from Hyundai Tucson car on being found in possession of 2 Kgs charas, 300 grams Ice, 300 grams heroin, 400 grams cocaine, PKR 21,91,500/-, US \$ 7024, Euro 2,125/-, Saudi Riyal 10/-, GBP 735/-, Indonesian Rupiah 100,000/-, Thai Baht 2,250/-, Canadian \$ 20/-, Singapore \$ 150/-, Omani Riyal 2,535/-, UAE Dirham 51,765/-, Chinese Yuan 50/-, Qatari Riyal 210/-. After observing requisite formalities at the spot, the applicant along with

recovered narcotic drugs, car and currencies brought at said P.S. where aforesaid FIR was lodged against him.

**3.** After usual investigation, ANF submitted first Challan/report under Section 173, Cr.P.C for the offence under Sections 6-9 (c) of the Act of 1997. The Trial Court took the cognizance and registered the case as Special Case No. 79 of 2022 and, after a full-fledged trial, acquitted the applicant of the charge vide Judgment, dated 05.04.2024 (**“Judgment”**). Thereafter, on 18.05.2024, ANF-Clifton submitted second Challan/report (**“second Challan”**) for the offence under Sections 3/4 of the Act of 2010, originated from same FIR.

**4.** Learned Counsel for the applicant has contended that after a full dressed trial, the applicant was acquitted of the charge by declining application of respondent-ANF under Section 37 of the Act of 1997; that vide Judgment, the Trial Court also passed an order for return of personal search to the applicant viz; Pakistani and foreign currencies, his passport; and the vehicle to its owner; that the second Challan for the offences under the Act of 2010 is, therefore, not sustainable in law as it amounts to double jeopardy; that Section 2 (XXVI) of the Act of 2010 defines “predicate offence” as an offence specified in the Schedule 1 and the Act of 1997 is reflected at Section VIII of the said Act. Admittedly, the offence alleged in the FIR falls within the same category, however, by virtue of the Judgment, it is obvious that prosecution failed to prove the commission of any such offence, hence, “predicate offence” has not been proven; that Section 2 (XXVIII) of the Act of 2010 defines “proceeds of crime” means “any property derived or obtained directly or indirectly by any person from the commission of a “predicate offence” or a foreign serious offence; that the prosecution could not bring anything on record depicting that

the currency recovered from the applicant was derived from any criminal activity and/or that he obtained the same by selling drugs; that submission of the second Challan for the alleged offence under Sections 3 & 4 of the Act of 2010 manifests clear mala fide intention on the part of the ANF. In support of his contentions, the learned counsel has relied upon following case laws:

- i. *Justice Qazi Faez Isa & others v. The President of Pakistan & others (PLD 2021 Supreme Court 1).*
- ii. *Uzma Adil Khan & others v. Federation Investigation Agency & others (2023 P Cr. L.J. 1030)*
- iii. *Abdul Saboor v. Federation of Pakistan & others (PLD 2024 Lahore 244)*
- iv. *The State/ANF v. Mehboob ur Rehman Afridi (2010 MLD 1896)*

**5.** Conversely, learned Special Prosecutor ANF has vehemently opposed the instant Application by supporting the impugned order. He has maintained that on the allegation of acquiring assets from crime proceeds of subject FIR, I.O presented second Challan regarding Sections 3 & 4 of the Act of 2010.

**6.** Heard, record perused.

**7.** It reflects from the record that Special Case No. 79 of 2022 was culminated by the trial Court vide Judgment dated 05.04.2024, whereby applicant was acquitted of the charge. Trial Court also turned down application under Section 37 of the Act of 1997 with the observation that the deposition of I.O does not reflect that the applicant-accused sold any narcotics prior to reaching at Café Strada. Trial Court also observed that the prosecution failed to establish recovered amount as drug proceed. It further reflects from the record that, on 10.05.2024, the I.O presented second Challan originated from the subject FIR for the offences under Sections 3 & 4 of the Act of

2010 against the applicant. It also appears from the record that the Trial Court framed the charge on second Challan arraigning the applicant for the offence under Sections 12 & 13 of Act of 1997 and under Sections 3 & 4 of the Act of 2010 on the property in question for which the Trial Court already opined that prosecution failed to establish that the alleged recovered currency was drug proceed, whereas the applicant and his defence witness have established that the same belonged to the family members of the applicant and the vehicle in question to applicant's brother Sajjad Ali, regarding that the Trial Court passed the order for returning the same to them.

**8.** For the sake of clarity, it would be appropriate to reproduce Section 3 of the Act of 2010, as under:

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

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

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

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

**9.** Bare reading of above provision of law reflects that for establishing offence under the Act of 2010, there must be nexus with the “proceeds of crime”; hence, the expression “proceeds of crime” is a prerequisite of an offence committed under the said Act. Explanation II of Section 3 *ibid* states that for proving an offence under this Section, the conviction of accused for the “predicate offence” (*underlying the crime that generated the illicit funds*) is not required. The explanation II of Section 3 also speaks that the “predicate offence” and money laundering offence are two distinct offences and will be tried separately and will have no effect on each other’s outcome. In essence, explanation II simplifies the prosecution of money laundering by focusing on the illicit activities associated with the proceeds of crime, rather than proving the “predicate offence”. This can be helpful in situation where it is difficult to directly link a person to the original crime, but it still requires strong evidence that he was involved in the money laundering activities. Money laundering is a process of conversion of illicit money which comes out of the crime, which is then intermixed with the illicit money to make appear legitimate and it became very difficult to distinguish the legitimate, money from the illegitimate one. The process has three main phases; firstly, the black or soiled money must be sliced from the “predicate offence”; secondly, the chain must be made mysterious or destroyed so as to avoid discovery; and, lastly the proceeds of such crime are re-injected into further business activity to launder it.

**10.** Under Section 9 of the Act of 2010, the I.O, within seven days from the date of order of attachment made under Section 8(1) or, seizure of property under Sections 14 & 15 *ibid*, is required to serve a notice of not less than thirty days on the person concerned calling upon to indicate the source of his income, earning or assets, out of

which or by means of which he has acquired the property attached under Section 8(1) or seized under Sections 14 & 15 *ibid*. The attachment of property in terms of Section 8(1) could only be initiated on the request of I.O., on the basis of report received by him from the concerned investigating agency, by order in writing, with prior permission of the Court, and thereafter I.O. is required to attach the properties provisionally if he reasonably believes that the properties are involved in money laundering. Moreover, Act of 2010 defines “predicate offence” as offence specified in Schedule-I to said Act. Under Section VIII of Schedule-I *ibid*, following Sections of the Act of 1997, *inter alia*, are “predicate offence”.

- 9. punishment for the contraventions of Section 6, 7 and 8.
- 13. punishment for the contraventions of Section 12.

**11.** It may be observed that the Act of 2010 gives rise to a procedural requirement and extending power to ANF in terms of Section 24 of the Act of 2010 for investigation and appointment of I.Os., However, the primary requirement is a report initiated by the I.O, To deal with “predicate offence” in terms of Section 2 (XXVI) of the Act of 2010, every offence specified in Schedule I of the said Act is a “predicate offence” but the other requirements of Section 3 of the said Act are also key factors to be considered if a person is charged for the said offence i.e. at least it has to be demonstrated *prima facie* before charging the person that he acquired, converted, possessed, used or transferred property, knowing or having reason to believe that such property was proceed of crime and that person was involved in concealing the true nature, origin, location of those properties or he participated, associated, conspired to commit, attempted to commit, aided, abated, facilitated in proceeds of crime then offence of money laundering is stated to have been committed. It may also be observed

that the “predicate offence” is one key factor in the offence of money laundering, while the second key factor is the proceeds of crime including properties, monetary benefits, etc. generated directly or indirectly from the commission of “predicate offence”, therefore, prosecution is under obligation to demonstrate that such property, assets or money has been accumulated from narcotic’s business and the same was acquired with concealment of its source and/or made fake transactions, etc. then it becomes offence of money laundering’ However, no one can be directly or at first be accused of money laundering for having unexplained amount or banking transaction unless he is given a chance to explain the source of income. After giving opportunity to give detailed explanation regarding undeclared amount in his bank account and banking transaction. If such person failed to dispense explanation and the I.O has reasonable apprehension that the money/amount is the proceed of crime and has been generated from illicit means or from a criminal activity then he, under Section 9 of the Act of 2010, will ascertain the fact, as to how and under what circumstances seizure of assets could be made and for that a prior notice is also required to be issued to the concerned person to indicate his source of income, earning for assets by means of which he accumulated his assets, which is prerequisite for proceedings of “predicate offence” under said Act.

**12.** We are mindful that Section 561-A, Cr.P.C. confers upon High Court inherent powers to make such orders as may be necessary to give effect to any order under Cr.P.C. or to prevent abuse of process of any Court or otherwise to secure the ends of Justice. These powers are very wide and can be exercised by the High Court at any time. There is no doubt that a High Court can quash a judicial proceeding

pending before any subordinate Court under Section 561-A, Cr.P.C. to prevent abuse of the process of any Court or otherwise to secure the ends of Justice (*Reference can conveniently be made to 1994 SCMR 798*) provided always that the Court from available material is satisfied that demands of justice require real, immediate and substantial Justice to save a party from harassment and abuse of the process of Court.

“The Jurisdictional requirements for the exercise of powers under Section 561-A, Cr.P.C. are:

- (i) To give effect to any order of any Court,
- (ii) To prevent abuse of process of any Court.
- (iii) To secure the ends of Justice

Such powers cannot be exercised against the express language of the statute and it only preserves what possessed or is inherent in the Court itself (*Reference can be made to 1994 SCMR 70*).

In fact, the expression “abuse of process” used under Section 561-A, Cr.P.C. connotes an unwarranted or irrational use of legal proceedings or process which also includes the presence of ulterior motives for activating the process for unjustified arrest or groundless criminal prosecution. The essential purposefulness of this doctrine is to foster and safeguard the Judicial System, ensuring that it is not misused or blemished. This expression can be comprehended as an acuity if a court has jurisdiction to hear a case, it may terminate the prosecution if an “abuse of process” is floating on the surface on record, with logical reason and probability of exasperation, prosecution, and unfairness to the opposite side.

**13.** In the case in hand, the prosecution’s case is revolved around the currency, vehicle and bank accounts, which have been shown as crime proceeds in the FIR; however, the commission of offence has not been proved under the Act of 1997. It is astonishing to note that the



second Challan indicates that investigation for the offence of money laundering was handed over to Inspector Irum Yaqoob, who submitted second Challan for the offence under Sections 3 & 4 of the Act of 2010 but she did not take initiative and measures prescribed under the Act of 2010 during the course of investigation, pending with her for more than one and half years. On the contrary, the Trial Court has observed that the prosecution failed to establish that the recovered amount was the drug proceeds. No doubt “money laundering” is an independent offence, yet it is dependent on the underlying “predicate offence” for the proceeds of crime. Apex Court in case of Justice Qazi Faez Isa and others (supra) has observed, as under: -

*“Reading of sections 2 and 3 of the 2010 Act provided that a necessary element of the offence of money laundering was the commission of a predicate offence. The execution of this offence gave birth to the proceeds of crime, the movement of which attracted the criminal conduct of money laundering. Therefore, without the commission of a predicate offence there could be no offence of money laundering.”*

**14.** In view of above discussed facts and circumstances, the continuation of proceedings will amount to abuse of process of Court and there is no probability of the applicant/accused being convicted in the aforesaid case/crime. Hence, we allow this Criminal Revision Application by setting aside the impugned order, dated 16.08.2024, passed on the application under Section 265-K, Cr.P.C. Consequently, the applicant stands acquitted of the charge in the aforesaid crime.

**15.** These are the detailed reasons of our short order dated 23.05.2025.

JUDGE

JUDGE