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IN THE HIGH COURT OF SINDH, KARACHI

Present: **Mr. Justice Ahmed Ali M.Sheikh**
Mr. Justice Mohammed Karim Khan Agha

CP No.D-446/2016
Misbah Karim & Miftah Karim
V.
Federation of Pakistan & others

CP No.D-8034/2015
Shamim Mushtaq Siddiqui
V.
Federation of Pakistan & others

CP No.D-7999/2015
Mian Muhammad Abdullah
V.
Federation of Pakistan & others

CP No.D-405/2016
Mian Muhammad Abdullah
V.
Federation of Pakistan & others

CP No.D-406/2016

Shamim Mushtaq Siddiqui
V.
Federation of Pakistan & others

Date of hearing	30.03.2016
Date of Order	15.04.2016
Petitioners:	Through Mr. Shahab Sarki, advocate for petitioner in C.P. No.D-446/16, Mr Abdul Sattar Pirzada and Mr. Umair Qazi, advocates for petitioner in C.P. No.D-405/16, Mr. Samir Ghazanfar, advocate for petitioner in C.P. No.D-7999/15, Mr. Zahid F. Ibrahim advocate for petitioners in C.P. No.D-406/16 and C.P. No.D-8034/15
Respondents	Through Mr. Salman Talibuddin, Additional Attorney General for Pakistan and Mr. Saeed Ahmed Memon Standing Counsel

JUDGMENT

MOHAMMED KARIM KHAN AGHA, J: By this common order, we intend to dispose of the above petitions which revolve around similar points of law, whereby the petitioners being aggrieved and

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dissatisfied with the Federal Investigation Agency (FIA) enquiry No.31/2015 dated 30.11.2015 whereby in effect the FIA was investigating offenses under the Anti Money Laundering Act 2010 (AMLA), the Foreign Exchange Regulations Act 1947 (FERA) and various sections of the PPC against the petitioners (FIA enquiry)as well as order dated 07.12.2015 passed by the learned Sessions Judge, South Karachi which allowed the FIA during the course of the FIA enquiry to call for the record of various banking details relating to the FIA enquiry (the impugned order) and had prayed that the FIA enquiry be declared as illegal, unlawful and quashed along with any other proceedings initiated thereto and to set-aside the impugned order.

2. The petitioners further prayed that the respondents be restrained from calling for any personal record of the petitioners without the permission of the Court and/or taking any coercive action against the petitioners, without placing the record before this Court.

3. The brief facts of the case as gleamed from the petitions are that based on spy information the FIA opened an inquiry No. 31/2015 dated 30.11.2015 whereby in effect the FIA was investigating offenses under the AMLA, the FERA and various sections of the PPC against the petitioners and during the course of his investigation the Inspector/E.O. of FIA moved an application under section 94 Cr.P.C. to the learned Sessions Judge, Karachi South for an order/permission to obtain the relevant documents/record from various banks and accounts through which allegedly money laundering had taken place which had caused heavy loss to the Government Exchequer which application was allowed through the impugned order. Such bank accounts in the impugned order were allegedly maintained or associated with some of the petitioners in the name of different persons in different banks whereby illegal credit/debit had been made under fake signatures from the date of opening of the accounts mentioned in the impugned order.

4. The Enquiry Officer had requested for issuance of direction to the Head of Compliance/Incharge, of the Banks where the aforesaid accounts were maintained, to supply/ provide the account opening forms, SS Cards, complete bank statements,

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debit/credit vouchers and other relevant documents in order to assist him with the FIA enquiry.

5. It is contended by the learned counsel for the petitioners (all of whom were/are associated with the Pakland Group of Companies in one way or another) that they are innocent of any wrong doing and have been falsely implicated in the FIA enquiry with malafide intention of the FIA officials just to show their efficiency and acting as cronies of private persons against whom civil litigation is pending and that the impugned order is illegal and liable to be set-aside as the petitioners are not involved in the said allegation of signing of any forged/fake documents and in fact the 13 alleged lands which are part of the FIA enquiry are and have always been in the name of the respective companies and not in the name of the petitioners.

6. They further contended that many cases are subjudice before this Court in relation to the allegation of misappropriation of lands and it is strongly believed that petitioners opponent has attempted to circumvent the civil proceedings, where no relief could be found, with the sole malicious intent to pressurize, malign and coerce the petitioners.

7. So far as the second allegation of money laundering is concerned it is submitted that the FIA enquiry violates the core principles of Section 3 of the AMLA wherein it has to mandatory establish that the money which is being looked into are proceeds of a crime. Furthermore, there is grave violation by the respondents of section 6 and 7 of the AMLA which stipulates that only the Financial Monitoring Unit (FMU) of the State Bank of Pakistan (SBP) is empowered to first enquire into a potential case of money laundering and in the event it is of the view that an act of money laundering may have taken place it would send all the Suspicious Transaction Reports (STR's) received from the financial institutions along with all necessary material to the Investigation Agency duly appointed under Section 2(j) of the said Act, which procedure was not followed in the instant case and thus the FIA enquiry was without lawful authority especially as per settled law that an act could only be done in the manner prescribed by law as was held in the case of **Muhammed Anwar V Mst Ilyas Begum** (PLD 2013 SC 255). In essence it was submitted that the FIA had no jurisdiction

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or legal authority to carry out the inquiry in the manner in which they were so doing which had to be initiated by the FMU not by the FIA on their own motion and even otherwise the FIA had no power to investigate into the actions of private individuals under the FIA Act 1974 (FIA Act) and in this respect the petitioners placed reliance on the cases of **Waqar Ahmed V FIA and others** dated 27-02-2014 arising out of W.P 3223P /13 and **Hamza Shabaz Sharif V Federation of Pakistan** (P.Cr.LJ 1999 1584).

8. With regard to the impugned order learned counsel for the petitioners submitted that the order had been passed by the concerned judicial officer in violation of Section 94 Cr.PC since the FIA enquiry was only at the inquiry stage and not the investigative stage and since the judicial officer could only pass an order under Section 94 Cr.PC if the investigation stage had been reached the impugned order had been passed without lawful authority.

9. Learned counsel for the petitioners further contended that the rights of the petitioners under Article13 of the Constitution in terms of self incrimination would also be violated if the petitioners were compelled to make statements against themselves. In this respect reliance was placed on the case of **Muhammad Siddique V State** (PLD 1983 FSC 173)

10. On the other hand learned Additional Attorney General and Standing Counsel have contended that the FIA enquiry has been carried out in accordance with the law and the impugned order does not warrant any interference which has been rightly passed in accordance with law and thus they argued that the petitions be dismissed. In particular they emphasized that the FIA had independent jurisdiction to investigate cases of money laundering and was not dependant on receiving reports from the FMU in this respect.

11. We have carefully perused the record, considered the relevant law and the submissions (both oral and written) of learned counsel for the parties and the authorities cited by them at the bar.

12. There appear to us to be two main legal issues arising out of this petition:

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(a) Whether the FIA can of its own accord inquire/investigate the offense of money laundering without receiving a request from the FMU, which in essence deals with the question of whether the FIA enquiry is lawful and

(b) Whether the judicial officer had the power to order various banks to provide certain banking documents at the inquiry stage to the FIA, which in essence deals with the question whether the impugned order had been lawfully passed.

Turning to the first question of whether the FIA can of its own accord inquire/investigate the offense of money laundering without receiving a request from the FMU.

13. At the outset we are of the view that it is irrelevant whether or not the AMLA is mentioned in the schedule to the FIA Act or not. This is because the FIA has specifically been made an investigating agency under Section 2 (j) of the AMLA which reads as under:

> Section 2(j) **"Investigating or prosecuting agency"** means the National Accountability Bureau (NAB), **Federal Investigation Agency (F.I.A.)**, Anti-Narcotics Force (ANF) or any other law enforcement agency as may be notified by the Federal Government for the investigation or prosecution of a predicate offence;(bold added)

14. We are fortified in our view by the Peshawar High Court Divisional Bench Decision in the case of **Waqar Ahmed V FIA and others** dated 27-02-2014 arising out of W.P 3223P /13 whereby it was held as under:

> "Para.6. First of all we would like to resolve the question of jurisdiction and competence of the FIA to investigate the case registered under Anti-Money Laundering Act, 2010. Originally this was promulgated through Ordinance as Anti-Money Laundering Ordinance 2007 (XIV of 2007) which was made part of the Schedule as Item No.28 of Federal Investigation Act 1974. However, as it was not made Act of the parliament, so it died his natural death on expiry of its statutory period. Later on Anti-Money Laundering Act, 2010 (VII of 2010) was promulgated which has not been made part of the Schedule **and rightly so because it has self contained authorization appearing in**

Section 2(J) of the ibid Act which defines the investigating/prosecuting Agency. In this definition clause, beside National Accountability Bureau & Anti-Narcotics Force, Federal Investigation Agency has also been made part of the investigation and prosecution. As such the FIA is competent to investigate the matter and objection raised by the petitioner is repelled." (bold added)

15. Even otherwise it appears that the Federation through Notification dated 27-03-2010 had inserted the AMLA in the schedule of the FIA Act.

16. It was next contended by the petitioners in terms of the FIA's jurisdiction that since this was a private dispute and did not involve any Government officials or institutions the FIA were debarred from investigating into the matter under FIA Act. Reliance was placed on the case of **Hamza Shabaz Sharif V Federation of Pakistan** (P.Cr.LJ 1999 1584).

17. The aforesaid case was decided in 1999 before the AML Ordinance 2007 and AMLA and as such we consider it distinguishable on the ground that the AMLA has specifically given the FIA power to investigate in cases falling within the purview of the AMLA under the provisions of the AMLA. Since the AMLA will also encompass private persons (who are most likely to fall in its net) as well as Government officials we are of the view that the FIA has been given by the AMLA specific powers to investigate private individuals in the case of money laundering. To exclude private persons from the scope of the FIA investigation in our view would be both illogical and contrary to the intention of the legislature when the scheme of the AMLA is considered. For example, if the FMU referred a Suspicious Transaction Report (STR) and all relevant information collected pursuant to it to the FIA for further inquiry would the FIA be debarred from investigating if the STR and associated information concerned a private person as opposed to a Government official? In our view it would not and as such this contention is misconceived.

18. Even otherwise the offense of money laundering could be perceived as being an offense against the State/society especially if it concerned the non payment of duties, taxes which may fall within the domain of the Ministry of Finance. The petitioners'

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argument since the passing of the AMLA in our view has failed to appreciate that the law must move with the times. In 1999 no offense of money laundering existed in Pakistan. Today such an offense does exist and the offense itself is not only a very menacing one but also a transnational crime. Thus in order to combat it the FIA, who have the required expertise, have been specifically empowered, along with other specialized agencies, to investigate it through the AMLA whether it concerns a private person or a Government official. Today the FIA is investigating many white collar crimes which do not necessarily involve Government officials. For example the *axact case* and the *AKD case*. In any event we are not bound by the judgment of the Hon'ble Lahore High Court which is only of persuasive value and with up most respect and deference we find that in the year 2016 and the recognition of the growth and menace of money laundering and the presence of the AMLA we cannot agree with the same. The AMLA is also a special law which will prevail over the FIA Act in so far as the two Acts are inconsistent

19. As such in our view the FIA can investigate alleged cases of money laundering by private individuals under the AMLA.

20. As to the contention that as civil proceedings are already pending no criminal action can be taken in our view this contention is of little significance as it is trite law that both civil and criminal proceedings can run in parallel. Besides which learned counsel for the petitioners did not place any document on record to show that the subject matter of the FIA enquiry was subjudice in any civil proceedings.

21. Money laundering is defined in Section 3 AMLA as under:

> "Section 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 (as defined in S.2 (r)AMLA), knowing or having reason to believe that such property is proceeds of crime (as defined in S.2 (q) AMLA);
> (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

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reason to believe that such property is proceeds of crime; or

(d) Participates in, associates, conspires to commit, attempts to commit, aids, abets, facilities, or counsels the commission of the acts specified in clauses (a), (b) and (c).

22. It is apparent from the definition that the offense of money laundering will only be attracted if the money's, assets, property etc are acquired through the proceeds of crime e.g. corruption, extortion etc and there is an attempt to in effect hide the illegal source from where the funds came.

23. It therefore appears self evident in our view that an inquiry/investigation needs to be made before such a conclusion can be reached. For example, a person may admit to acquiring money through corrupt activities and putting that money into a property in order to disguise the origins of the funds. Thus, a case of money laundering is made out. The so called predicate offense of corruption is present (the relevant predicate offenses which will attract the AMLA are set out in the schedule to the AMLA which are mainly serious criminal offenses under the PPC and ATA) and so to the attempt to hide the corruption money by using it to purchase a property.

24. Most of such cases of money laundering however are not as straight forward. Money laundering is a sophisticated white collar crime which is notoriously difficult to prove as various mechanisms such as the creation of **"off shore companies"** etc have been used to hide the illegally acquired money often in other person's names etc. which may attract the AMLA. Such investigations often require the use of highly specialized asset tracers and forensic audit to uncover whether any of the funds in the various off shore accounts are legitimate or not.

25. In such complex investigations where there are no documents to hand the logical starting point is often to monitor the persons or companies bank accounts. Thus, if a suspicious transaction is found in a bank account attempts can be made to see if it has arisen on account of proceeds of crime and as such would amount to a predicate offense as defined under S.2(s) AMLA so as to bring it within the purview of the AMLA.The point is, in our view, that an

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investigation under AMLA is not precluded because a predicate offense has not already been found. The scheme of the AMLA through the FMU allows the FMU the ability to identify a suspicious transaction and then work back ward to see if the suspicious transaction may have arisen out of proceeds of crime which are the fruits of a predicate offense which may then bring it within the ambit of the offense of money laundering and then pass on such information to the investigative agency under the AMLA to follow up on and potentially make a case of money laundering. Of course, not all suspicious transactions will lead to the offense of money laundering having been committed as often the account holder may be able to justify that the transaction has come from a legitimate source of funds.

26. In this respect for this very purpose the FMU has been established by virtue of Section 6 AMLA. S.6 (4) (a), (b), (c), (j) and (k) seem most relevant for the present purposes and are set out below for ease of reference:

> **"S.6 (4) The FMU shall exercise the following powers and perform the following functions, namely:-**
>
> (a) **To receive Suspicious Transactions Reports (STR's) and CTRs from financial institutions** and such non-financial businesses and professions as may be necessary to accomplish the objects of this Act.
>
> (b) **To analyze the Suspicious Transactions Reports and CTRs** and in that respect the FMU may call for record and information from any agency or person in Pakistan (with the exception of income tax information) related to the transaction in question. All such agencies or persons shall be required to promptly provide the requested information;
>
> (c) **To disseminate, after having considered the reports and having reasonable grounds to suspect, the Suspicious Transaction Reports and any necessary information to the investigating agencies concerned as described in clause (j) of section 2'**
>
> (j) To engage a financial institution or an intermediary or such other non-financial businesses and professions or any of its officers as may be necessary for facilitating implementation of the provisions of this Act, the rules or regulations made hereunder; and
>
> (k) To perform all such functions and exercise all such powers as are necessary for, or ancillary to the attainment of the objects of this Act. (bold added)

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27. The system however seems to be dependant on Section 7 AMLA which provides the procedure and manner for furnishing information by the financial institution (which as per S.2 (f) are largely any kind of institution which is involved in the financial services industry e.g. banks) and other non financial businesses and professions (which are generally persons dealing with areas where proceeds of crime can be hidden e.g. jewelers , estate agents or assist in the same i.e. professionals such as accountants) which for ease of reference is set out as under:

> "Section 7. Procedure and manner of furnishing information by the financial institution or reporting entities.—(1) **Every financial institution shall file with the FMU, to the extent and in the manner prescribed by the FMU, Suspicious Transaction Report conducted or attempted by, at or through that financial institution if the financial institution and reporting entity knows, suspects, or has reason to suspect that the transaction or a pattern of transaction of which the transaction is a part:-**
>
> (a) Involves funds derived from illegal activities or is intended or conducted in order to hide or disguise proceeds of crime;
> (b) Is designed to evade any requirements of this section; or
> (c) Has no apparent lawful purpose after examining the available facts, including the background and possible purpose of the transaction; or
> (d) Involve financial terrorism.
>
> Provided that Suspicious Transaction Report shall be filed by the financial institution or reporting entity with the FMU immediately but not later than seven working days after forming that suspicion.
>
> (2) Any other Government agency, autonomous body or regulatory authority may share intelligence or report their suspicions within the meaning of suspicious transaction report or CTR to FMU in normal course of their business and the protection provided under Section 12 shall be available to such agency, body or authority.
>
> (3) All CTRs shall, to the extent and in the manner prescribed by the FMU, be filed by the financial institutions or reporting entities with the FMU immediately, but not later than seven working days, after the respective currency transaction.
>
> (4) Every reporting entity shall keep and maintain a record relating to Suspicious Transactions Reports and CTRs filed by it for a period of five years after reporting of transaction under subsection (1), (2) and (3).
>
> (5) The provisions of this section shall have effect notwithstanding any obligation as to secrecy or other

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restriction on the disclosure of information imposed by any other law or written document.

(6) **Notwithstanding anything contained in any other law for the time being in force, any Suspicious Transactions Reports required to be submitted by any person or entity to any investigating and prosecuting agencies shall on the commencement of this Act, be solely and exclusively submitted to FMU to the exclusion of all others."** (bold)

28. As can be seen from Section 7 almost the entire potential of a money laundering investigation will turn on whether the financial institution spots a so called suspicious transaction since the other reporting entities are unlikely to report little, if anything. If the financial institution fails to spot or recognize or considers that a transaction is not suspicious and fails to report it to the FMU then the FMU is powerless to follow up on the suspicious transaction since it would never have been made aware of it. The whole system of the FMU and its role in tracking down cases of money laundering is therefore in our view dependant on the vigilance of the financial institutions which may very well take a larger perspective/benefit of doubt view before reporting any of its clients for carrying out suspicious transactions. This is because to report on customers/clients may lead to the loss of present as well as future business for the concerned financial institution not withstanding Section 33 AMLA which concerns sanctions for those financial institutions which fail to report suspicious transactions under Section 7 AMLA

29. The question under these circumstances is whether there is any room for any other agency on its own initiative to look into banking transactions which may be connected with money laundering under the AMLA.

30. According to the petitioners this is not possible mainly on account of Section 7 (6) which as mentioned earlier reads as under:

"Section 7(6) Notwithstanding anything contained in any other law for the time being in force, any Suspicious Transactions Reports required to be submitted by any person or entity to any investigating and prosecuting agencies shall on the commencement of this Act, be solely and exclusively submitted to FMU to the exclusion of all others." (bold added)

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31. According to the petitioners this is a non obstante clause which ousts the jurisdiction of any other agency (including the FIA) in connection with inquiring into suspicious banking transactions which lies within the exclusive domain of the FMU.

32. This prima facie appears to be a compelling argument. In our view however the following considerations need to be taken into account:

1. That the system set up by the AMLA in spotting potential money launderers is imperfect as it is **primarily dependant on the financial institutions** which may enable many potential launderers to escape. S.7 (6) is also largely limited to banking transactions. There may well be non banking transactions or other information which would alert an investigative agency such as the FIA to the potential offense of money laundering

2. The gravity of the offense. Not only does money laundering spring out of an already committed serious criminal offense but if the money is laundered abroad on the purchase of say luxury properties that is money which has been illegally taken out of Pakistan's economy which it could have benefited from through job creation etc and has thereby damaged the Country's economy whilst benefiting another country's economy through illegal acts most often committed in Pakistan. This in our view is a crime against society and all means and measures must be taken to prevent money laundering and its perpetrators.

3. The FIA has been named as an investigating agency under the AMLA and has expertise investigating financial crime and wide investigative powers.

4. Information regarding potential money laundering is not confined to suspicious banking transactions e.g. an informant may come forward and inform the FIA about a person or company backed by reliable/credible material which is involved in money laundering. Should such information simply be ignored? In this case the Statement of Miftah Karim and letter dated 23-08-2013 to Bank Julius Bear and Co. Ltd from some of the petitioners would in our view necessitate further inquiry. Should the FIA turn a blind eye to this? Or ignore it simply because the information has not come via the FMU? If the petitioners have not committed any criminal offense or have not been been involved in any illegal act they should have no hesitation in explaining their position to the FIA.

5. The scheme of the AMLA when read in a holistic manner rather than in isolated parts tends to suggest that its primary, if not only, focus is based on suspicious transactions as reported by financial institutions and no other effective source

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33. Keeping the above considerations in mind and the fact that the FMU, FIA etc should be working together to catch potential money launderers for the benefit of the State and the effective administration of the criminal justice system we are of the view that generally the FMU mechanism should be used to trace out potential money launderers at first instance however in order to prevent any one slipping through the net (as appears to be the case in these petitions on account of a failure of a reporting entity) in certain cases where the FIA has received reliable/credible information of potential money laundering the FIA may on its own motion open an investigation themselves under the AMLA and proceed with the same in accordance with law. If during the course of their inquires the FIA require access to bank accounts and banking information the fact that they will need to convince a judicial officer of the necessity of this ought to give sufficient comfort to both persons and companies who are using their bank accounts for legitimate purposes although the FIA may consider using S.25 AMLA which provides as under and gives another indication that the FIA can act independently of the FMU:

> S. 25. Officers to assist in inquiry, etc.---The officers of the Federal Government, Provincial Government and local authorities, **financial institutions are hereby empowered to assist the Investigating Officers and agencies** and other authorities in the enforcement of this Act."

34. We are therefore of the view that the FIA in investigating cases of money laundering can on its own motion based on reliable/credible information open its own investigation into money laundering under the AMLA independently of the FMU especially in cases where the initial information is not based on banking transactions or on information from financial institutions.

35. We had considered whether Section 7(2) AMLA may have been of assistance whereby the FIA could rout any information which it had through the FMU for further investigation however when we read the AMLA as a whole we were of the considered view that Section 7(2) AMLA based on Section12 AMLA applied more to financial institutions, non financial businesses and professions such as real estate agents , jewelers etc and those other professions defined in S.2 (m) AMLA as non financial business and

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professions who are also reporting entities under S.2 (u) AMLA as opposed to the FIA

36. On a separate issue it had also been argued that the FIA during its inquiry could not record the statements of the petitioners as under Article 13 of the Constitution they were protected from the right of self incrimination. For ease of reference Article 13 is set out below.

> "Article 13. Protection against double punishment and self-incrimination. No person---
>
> (a) shall be prosecuted or punished for the same offence more than once; or
>
> (b) **shall, when accused of an offence, be compelled to be a witness against himself.**" (bold added)

37. In our view this argument is misconceived. S.160 Cr.PC relates to the power of a police officer to require the attendance of any witnesses who include any person who may even ultimately become an accused. As was held in **Maqbool Ahmad V SHO Police Station Chhanga Manga** (1999 UC 228 Relevant P.235 also reported in P.Cr.LJ 1999 1198 Relevant 1204) as under:

> "Para 9. I would express that the scope of Sections 160, 161 and 162 of the Code of Criminal Procedure includes actual accused and suspects. The words "any person" in section 160 includes the person(s) of the antagonist parties acquainted with the circumstances of the case and the said section 160 itself is self-explanatory in this respect. The expression "any person" in sections 161 and 162 of the Criminal Procedure Code would include persons then or ultimately found to be accused. Any person supposed to be acquainted with the facts and circumstances of the case includes the "accused person" who fills that role because the Investigating Officer supposes him to have committed the crime and must, therefore, be familiar with the facts of the case. Legally and factually the supposition may later prove a fiction but that does not repel the sections nor does the marginal note "examination of witnesses by police" close the matter. Legally the 'marginal note' does not control the meaning of the section. The interrogation of an accused and recording of his version is to acquire the true facts with which he is acquainted. To be a witness from a functional angle is to impart knowledge in respect of a relevant fact and that is the purpose of questioning the accused under sections 161 and 162 of the Code of Criminal Procedure so that final opinion in the matter can be expressed by the Investigating Officer after weighing the version of the parties."

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38. Even under S.161 Cr.PC S.161 (2) specifically provides as under:

> S.161 (2). Such person shall be bound to answer all questions relating to such case put to him by such officer, **other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture."** (bold added)

39. Furthermore, one of the main objects of calling a person to record his statement under S.160 Cr.PC if there is an on going inquiry in which that person may be able to assist, especially if there are certain allegations pending against him, is to give that person a chance to clear his position and if he does so that may lead to his involvement in any wrong doing being ruled out by the investigative agency. It also ties in with the settled principle of natural justice of no one being condemned unheard. Thus, if there is an allegation against a person it is only fair that he should have a chance to respond to that allegation before matters are taken any further against him. With regard to self incrimination a person can always inform the investigation agency in writing that he has no comment to make on the concerned matters (which seems to be specifically provided in S.161 (2)). In such a scenario his right to be heard would have been respected as he would have been given the opportunity to explain his position and likewise his concern about non self incrimination would have been satisfied.

Turning to the next question of whether the judicial officer had the power to order various banks to provide certain banking documents at the inquiry stage, which in essence deals with the question whether the impugned order had been lawfully passed.

40. This issue revolves around the interpretation of Section 94 Cr.PC. For ease of reference Section 94 Cr.PC is set out as under:

> "Section 94. Summons to produce document or other thing. (1) whenever any Court or any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable **for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer**, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and

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produce it, or to produce it, at the time and place stated in the summons or order.

Provided that no such officer shall issue any such order requiring the production of any document or other thing, which is in the custody of a bank or banker as defined in the Bankers' Books Evidence Act, 1891 (XVII of 1891), and relates, or might disclose any information which relates, to the bank account of any person except,---

(a) **for the purpose of investigating an offence under section 403, 406, 408 and 409 and section 421 to 424 (both inclusive) and sections 465 to 477-A (both inclusive) of the Pakistan Penal Code, with the prior permission in writing of a Sessions Judge; and**

(b) in other cases, with the prior permission in writing of the High Court.]

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Evidence Act, 1872, sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities."(bold added)

41. In this respect it is noted that the FIA application and impugned order referred to Section 406 PPC which is included in Section 94.

42. The question of inquiry and investigation then arises. Under the FIA Act and rules neither inquiry nor investigation is defined although both terms are used in the FIA Act.

43. Under the AMLA Section 2 (j) as noted earlier defines an investigating agency as under:

Section 2(j) "**Investigating or prosecuting agency**" means the National Accountability Bureau (NAB), Federal Investigation Agency (F.I.A.), Anti-Narcotics Force (ANF) or any other law enforcement agency as may be notified by the Federal Government for the investigation or prosecution of a predicate offence;

44. Section 2 (k) AMLA defines an investigating officer as under:

"Section 2(k). "Investigating officer" means the officer nominated or appointed under section 24.

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45. Section 24 and 25 AMLA provide as under in respect of investigating officers.

> "Section 24. Appointment of Investigating Officers and their powers.—(1) The investigating agencies, as provided in clause (j) of section 2, may nominate such persons as they think fit to be the Investigating Officers under this Act from amongst their officers.
>
> Section 25. Officers to assist in inquiry, etc.--- The officers of the Federal Government, Provincial Government and local authorities, financial institutions are hereby empowered to assist the Investigating Officers and agencies and other authorities in the enforcement of this Act."

46. Section 22 AMLA reads as under:-

> Section 22. Application of Code of Criminal Procedure, 1898 (Act V of 1898) to proceedings before Court.---(1) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) shall, insofar 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."** (bold added)

47. As such guidance may be sought from the Cr.PC.

(a) Section 4 (k) Cr.Pc defines an Inquiry as under:

> "Section 4(k). *"Inquiry"*. "Inquiry" includes every inquiry other than trial conducted under this Code by a Magistrate or Court:"

(b) Section 4(L) Cr.PC defines an investigation as under:

> "Section 4(L). *"Investigation"*. "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf:

48. In the FIA Act and AMLA it appears that little turns on whether an inquiry or investigation is being carried out (unlike the National Accountability Bureau Ordinance 1999(NAO) where under S.25 a Voluntary Return (VR) can only be made at the inquiry stage and not at the investigation stage where only a Plea Bargain (PB) is available with the VR and PB options having distinctly different legal consequences.

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49. As per Cr.PC definition of investigation and the definitions used in the AMLA (which exclude inquiry) in our view it appears that the FIA was carrying out an investigation under the AMLA as opposed to an inquiry and as such the FIA application under Section 94 Cr.PC was entertainable and the District and Sessions Judge had the power to pass the order which he made after judicial application of mind.

50. In any event, in our view the question, based on the facts and circumstances of this case, whether the FIA was carrying out an inquiry or investigation is more a question of semantics and in our view on balance it was an investigation not withstanding the word inquiry used in the application especially as nothing appears to turn on the definition of inquiry and investigation in the AMLA as compared to the NAO. In our view the law should not be defeated by hyper technicalities. Even, if the impugned order were to be struck down there would be no bar on the FIA making a similar application except using the word investigation instead of inquiry so to strike down the impugned order on such a technicality would tend to serve very little purpose except to further unnecessarily delay the investigation

51. Thus, in our view the learned District and Sessions Judge quite properly passed the order which is impugned and it does not require interference.

52. In summary in our considered view based on the facts ad circumstances of this particular case and for the reasons mentioned above the FIA enquiry is held to be lawful and the impugned order is upheld and as such all the petitions are dismissed.

Dated: 15-04-2016

JUDGE

JUDGE