

# THE HIGH COURT OF SINDH, KARACHI

## Special Criminal Appeal No. 05 of 2022

[The Director, DG I&I-IR, Sales Tax House, Karachi v. The State & others]

Appellants : The Director, DG I&I-IR, Sales Tax House, Karachi and Tahir Zafar, Assistant Director (Audit)/ Investigation Officer through Mr. Ghulam Asghar Pathan Advocate.

Respondent No.1 : The State through Ms. Alizeh Bashir, Assistant Attorney General for Pakistan.

Respondent No. 2 : Nemo.

Respondent No. 3 : Nemo.

Dates of hearing : 15-05-2024, 21-05-2024 & 24-09-2024

Date of decision : 13-03-2025

## JUDGMENT

**Adnan Iqbal Chaudhry J.** - This appeal under section 23 of the Anti-Money Laundering Act, 2010 [AMLA] is from order dated 29.11.2021 [impugned order] passed by the Special Judge (Customs, Taxation & Anti-Smuggling) Karachi. Appellant No.1 [DG I&I-IR] is an investigating agency recognized under the AMLA and Appellant No.2 is investigation officer nominated under section 24 of the AMLA.

2. Appellant No.2 filed Complaint No. 09/2021 under section 21(2) of the AMLA before the Special Judge (Customs) for taking cognizance of the offence of money laundering committed by the Respondent No.3 along with predicate offences punishable under sections 192 and 192A of the Income Tax Ordinance, 2001 [ITO]. It was alleged that during tax years 2019 to 2021, Respondent No.3 had sold huge amounts of foreign currency to various money changers adding up to Rs. 813,160,091/; that he was not an NTN holder, had never filed an income tax return and did not hold a bank account; that

since his assets were unexplained, he was most likely involved in money laundering. It was contended that since predicate offences under sections 192 and 192A of the ITO were triable by the Special Judge (Customs), the offence of money laundering was also triable by the same Court in view of proviso (a) to section 20 of the AMLA which reads:

**“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.”

3. By the order impugned, the learned Special Judge (Customs) returned the complaint while observing that the offending act committed by the Respondent No.3 was at best unauthorized sale/purchase of foreign currency which constituted an offence under the Foreign Exchange Regulation Act, 1947 [FERA] not triable by the Special Court (Customs).

4. Mr. Ghulam Asghar Pathan, learned counsel for the Appellants submitted that even if the act of the Respondent No.3 also constituted an offence under the FERA, the Appellants were not investigating agency and investigation officer for such offence; that as long as the offending act constituted predicate offences under sections 192 and 192A of the ITO, the Special Judge (Customs) had jurisdiction to try the same along with the offence of money laundering keeping in view proviso (a) to section 20 of the AMLA. The learned Assistant Attorney General supported these submissions.

5. Heard learned counsel and perused the record.

6. Though section 2(xxvi) of the AMLA refers to Schedule-I for a list of predicate offences, the Act does not define the phrase 'predicate offence'. This phrase has been taken from the *United Nations Convention against Transnational Organized Crime (the Palermo Convention)* which was ratified by Pakistan in 2010. Article 2(h) of the Convention defines 'predicate offence' to mean "any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in Article 6 of this Convention". Article 6 of the Convention criminalized the 'laundering of proceeds of crime'. Thus, on the enactment of the AMLA, section 2 thereof defined "proceeds of crime" to mean any property derived from the commission of a predicate offence or a foreign serious offence, and then section 3 sets-out the offence of money laundering which involves dealing with property knowing or having reason to believe that is the proceeds of crime.

7. The interplay between money laundering and its predicate offence was explained by the Supreme Court in the case of *Justice Qazi Faez Isa v. The President of Pakistan* (PLD 2021 SC 1) as follows:

"107. .... It may be noticed from a reading of both Sections 2 and 3 that a necessary element of the offence of money laundering is the commission of a predicate offence. The execution of this offence gives birth to the proceeds of crime, the movement of which attracts the criminal conduct of money laundering. Therefore, without the commission of a predicate offence there can be no offence of money laundering. ...."

Thus, a predicate offence is *sine qua non* for the offence of money laundering.

8. Schedule-I to the AMLA includes offences under sections 192 and 192A of the ITO as predicate offences. Said offences are triable by the Special Judge (Customs) by virtue of section 203(1) of the ITO. Therefore, in view of proviso (a) to section 20 of the AMLA, where the offence of money laundering is predicated on offences under sections 192 and 192A of the ITO, the offence of money laundering would also be triable by the Special Judge (Customs).

9. While section 20 of the AMLA provides that trial of the offence of money laundering and its predicate offence shall be before the same Court, the mechanism provided in section 21(2) of the AMLA for initiating proceedings *via* complaint is only for the offence of money laundering. Prosecution for the predicate offences under sections 192 and 192A of the ITO would have to be set in motion separately under the mechanism provided in Part XI of the ITO. Section 39(2) of the AMLA itself stipulates that provisions of the AMLA are in addition to and not in derogation of any law relating to predicate offences.

10. Though it is alleged that income tax evaded by the Respondent No.3 is above Rs. 100 million, the Appellants do not show proceedings taken under section 203B of the ITO to commence prosecution against the Respondent No.3 for the offence of concealing income. No FIR appears to have been lodged against him for the alleged predicate offences. In such circumstances where no action has been taken to prosecute the alleged predicate offences under the special law that deals with those offences, I do not see how a complaint for money laundering under section 21(2) of the AMLA was even maintainable.

11. Assuming for the sake of argument that the Appellants' complaint to the Special Judge (Customs) could be treated as a common complaint under section 21(2) of the AMLA and section 230E(1)(b) of the ITO, the predicate offences dealt by sections 192 and 192A of the ITO read as follows:

**“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 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."

12. Admittedly, Respondent No.3 was not an NTN holder and had never filed an income tax return prior to the complaint. In other words, he did not make a false statement in a document furnished under the ITO so as to attract section 192 thereof. As regards section 192A of the ITO, though it stipulates prosecution for concealment of income, it is attracted where the concealment is "in the course of any proceedings under the ITO". Again, when Respondent No.3 had not filed any income tax return or other document under the ITO, there could be no concealment in the course of proceedings under the ITO. While Respondent No.3 may have concealed income by not filing an income tax return, it is not the case that he was given notice under section 114(4) of the ITO to submit a return. In any case, non-compliance with section 114(4) of the ITO is at best an offence punishable under section 191 of the ITO which is not listed as a predicate offence in Schedule-I to the AMLA. Resultantly, the contents of the complaint do not even reveal the commission of predicate offences under sections 192 and 192A of the ITO.

13. For the foregoing reasons, the complaint made by the Appellants against the Respondent No.3 under section 21(2) of the AMLA was misconceived. Therefore, the appeal is dismissed.

**JUDGE**

Karachi

Dated: 13-03-2025