

---

# **MAINSTREAMING ANTI MONEY LAUNDERING LAW IN PAKISTAN**

**By Kamran Adil**

---

# MAINSTREAMING ANTI MONEY LAUNDERING LAW IN PAKISTAN

By

**Kamran Adil**

On 4<sup>th</sup> March, 2022, the sixth Plenary of the Financial Action Task Force (FATF) was held in Paris, France<sup>1</sup>. While reviewing ‘jurisdictions under increased monitoring’, it made three observations about Pakistan<sup>2</sup>:

1. That it has *‘completed 26 of the 27 action items in its 2018 action plan’*;
2. *‘Since June 2021, Pakistan has taken swift steps towards improving its AML/CFT regime and completed 6 of the 7 action items ahead of any relevant deadlines expiring, including by demonstrating that it is enhancing the impact of sanctions by nominating individuals and entities for UN designation and restraining and confiscating proceeds of crime in line with Pakistan’s risk profile’*.
3. *Pakistan should continue to work to address the one remaining item in its 2021 action plan by demonstrating a positive and sustained trend of pursuing complex ML investigations and prosecutions.*

Analysis of the aforementioned observations will show that, in all, Pakistan was in compliance of 32 out of 34 action items. This was an exceptional performance and should have been acknowledged by declaring exclusion of Pakistan from the category of ‘increased monitoring’ (grey list), but politicization of the global body must have prevented it from doing so. Notwithstanding the discriminatory treatment being meted out to Pakistan, it continues to strengthen its anti-money laundering and counter-terrorism financing regime. In these efforts, investigators and prosecutors work closely to initiate legal action against criminal networks involved in money laundering. Their aggressive posturing is being supplemented by enabling and progressive interpretation by courts that have started examining the Anti-Money Laundering Act, 2010 (AML Act) as a specialized law that must be mainstreamed

---

<sup>1</sup> <https://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-fatf-plenary-march-2022.html>

<sup>2</sup> <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-march-2022.html#pakistan>

with the legal and criminal justice system of the country. The instant adumbration will exemplify one such judgement of the Islamabad High Court in a case titled as Muhammad Rafique vs. Director General, Federal Investigation Agency, Islamabad<sup>3</sup> (Muhammad Rafique Case). The case was seminal in nature in many ways. It stated the principles that would govern the investigation, prosecution and adjudication of AML cases. Likewise, it examined the co-existence of the AML regime along with the general criminal law and criminal procedure. Thematic points made in the judgement may be summarized here as:

## 1. REPORTING MONEY LAUNDERING

Money laundering is a species of white collar crimes. It is, therefore, conceptually nuanced in the sense that it has to be linked with a predicate offence i.e. an offence that generates crime proceeds. This technicality has been part of architecture of criminalization of money laundering at international level where the United Nations Convention against Transnational Organized Crime (UNTOC) defines the concept of a ‘predicate offence’<sup>4</sup>. The linkage of offence of money laundering with a money dirtying offence is a technical matter that often harms investigations and prosecutions. In Pakistan’s criminal justice system, section 154 Code of Criminal Procedure, 1898 deals with reporting of a crime and it requires that only one criminal report be generated for an offence. The application of this requirement of law has been guarded by courts, and in the latest authoritative judgement of the Supreme Court on this issue in Sughran Bibi Case<sup>5</sup>, multiple criminal cases emanating out of one act/transaction have been disapproved. The challenge for initiating a money laundering case in Pakistan was that linking it with predicate offence was apparently inconsistent with the parameters set by Sughran Bibi Case. Examining this apparent inconsistency, the Court held that Sughran Bibi Case was based on the ‘concept of same transaction’, which was not applicable to money laundering cases due to their ‘specialized nature’. It specifically stated that ‘second’<sup>6</sup> criminal case (First Information Report) be registered in money laundering cases.

---

<sup>3</sup> Muhammad Rafique versus the Director General, Federal Investigation Agency (Writ Petition No. 1184/2011 of the Islamabad High Court). Available at: [https://mis.ihc.gov.pk/frmRdJgmnt?cseNo=Writ%20Petition-1184-2021%20%7C%20Citation%20Awaited&cseTle=Muhhammad%20Rafique%20VS%20DG%20FIA,%20etc&jgs=Honourable%20Mr.%20Justice%20Mohsin%20Akhtar%20Kayani&jgmnt=/attachments/judgements/128590/1/WP\\_1184\\_of\\_2021\\_and\\_WP\\_1778\\_of\\_2021\\_M\\_Rafique\\_v\\_FG\\_FIA\\_637794028984843841.pdf](https://mis.ihc.gov.pk/frmRdJgmnt?cseNo=Writ%20Petition-1184-2021%20%7C%20Citation%20Awaited&cseTle=Muhhammad%20Rafique%20VS%20DG%20FIA,%20etc&jgs=Honourable%20Mr.%20Justice%20Mohsin%20Akhtar%20Kayani&jgmnt=/attachments/judgements/128590/1/WP_1184_of_2021_and_WP_1778_of_2021_M_Rafique_v_FG_FIA_637794028984843841.pdf)

<sup>4</sup> Defined in article 2(h) of the United Nations Convention on the Transnational Crime, 2001

<sup>5</sup> PLD 2018 SC 595

<sup>6</sup> Para 24(iv) of the Judgement in Muhammad Rafique Case.

## 2. OVERRIDING EFFECT

Primacy and precedence <sup>7</sup>of the AML Act was fortified by stating that its non-obstante clause<sup>8</sup> had overriding effect on other legislations including general criminal law, the Control of Narcotics Control Act, 1997, the Anti-Terrorism Act, 1997 and the National Accountability Act, 1999.

## 3. ONUS OF PROOF

Distinguishing AML Act from the general criminal law (the Pakistan Penal Code, 1860), it was declared that the burden of proof in AML regime was on the accused whereas in the general criminal law, it was on the prosecution.

## 4. SEPARATE NATURE OF MONEY LAUNDERING OFFENCES

Separate nature of the offence of money laundering was undergirded throughout the judgement. It noted that the legislative intent of the legislature should be kept in mind while dealing with money laundering cases. It specifically stated that:

- a. Proceedings can be initiated against an accused of money laundering case irrespective of earlier criminal legal proceedings against him;
- b. Accused of the money laundering cases be tried separately;
- c. Acquittal in a predicate offence will not extend any benefit to an accused of money laundering case.

Muhammad Rafique Case is by no means exhaustive and is likely to be further refined and modified in further adjudication by courts. It, however, symbolizes that commitment, will and interest shown by the components of the criminal justice system to implement the law and to cleanse the financial system of Pakistan. It is hoped that these commitments will be appreciated by the FATF and its affiliate bodies that claim to adhere to rule-based international legal order.

---

7

<sup>8</sup> Section 39 of the Anti-Money Laundering Act, 2010