

INVESTIGATIONS IN COUNTER TERRORISM FINANCING AND MONEY LAUNDERING CASES

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SEQUENCE

A. CONSPECTUS

B. INVESTIGATION OF CFT CASES

C. INVESTIGATION OF AML CASES

D. SELECT CASE LAW

A. CONCEPTUS

- **Expanding legal framework**
 - Driven primarily by
 - FATF considerations
 - Part of Anti Corruption Campaign
 - Response to Terrorism
- **Multiple laws**
- **Inter-Agency Environment**
- **Combination of Civil and Criminal Laws Propositions**

A. CONCEPTUS

- In terms of decision making, mix of administration, regulation and adjudication
- International Cooperation
- Predicate Offence
- Separating streams of CTF and AML Cases
- Enforcement through Private and Public Entities
- Dealing with species of organized and white collar crimes

B. INVESTIGATION OF CTF CASES

- **Definition of Terrorism**
 - Ghulam Hussain Case (PLD 2020 SC 61)
- **Implementing International Sanctions**
 - Against Persons
 - Against Organizations
 - UNSC Sanctions (§11-000 of ATA)
 - Country Specific
- **Enforcing Fourth Schedule**

B. INVESTIGATION OF CTF CASES

- **CFT related offences:**

1. Fund raising (§ 11-H of ATA)
2. Use and possession (§ 11-I of ATA)
3. Funding arrangements (§ 11-J of ATA)
4. Money laundering (§ 11-K of ATA)
5. Disclosure of information (§ 11-L of ATA)
6. Punishment (§ 11-H to § 11-K)

B. INVESTIGATION OF CTF CASES

- **Powers of IOs and JITs:**

- Registration of FIR (§. 154 Cr. P. C)
- Enter and Search (§. 10 of ATA)
- Initiative to request for forfeiture of property (§. 10 read with §. 11-Q and 11-R of ATA)
- Initiate the process for attachment order (§. 11-P of ATA)
- Use special investigative techniques (only for CFT cases) with permission of court (§. 19-C of ATA)
 - Undercover operation
 - Intercepting communications
 - Accessing computer system
 - Controlled delivery

B. INVESTIGATION OF CTF CASES

- **Powers of IOs and JITs:**

- Cordon of Investigation (§ 21-A of ATA)
- Special Powers for Investigation (§ 21-B of ATA)
 - Cordon
 - Order people to leave
 - Removal of vehicles
 - Restrict access
 - Enter and search a premises
 - Search a person
 - Take possession of a property

C. INVESTIGATION OF AML CASES

- **Understanding Money Laundering:**
 - Concept of Money Dirtying
 - Predicate Offence (Qazi Faez Issa Case - PLD 2020 SC 1)
 - Crime Proceeds (Hudibya Paper Mills Case – PLD 2018 SC 296)
 - Non applicability of Sughran Bibi Case to AML cases (M. Rafique Case – IHC)
- **Initiation of AML Cases:**
 - **Registration** of FIR
 - **Inquiry** by FIA
 - **Referral** by Regulators, Self Regulatory Body and Reporting Entities

C. INVESTIGATION OF AML CASES

- **The Anti Money Laundering Act, 2010**
 - **Regulator** (§ 2(xxxiv) read with Schedule IV)
 - **Self Regulatory Bodies**
 - **Reporting Entities** (Financial Institutions and Designated Non Financial Businesses and Professions (DNFBPs))
- **The Anti Money Laundering (Referral) Rules, 2021**
 - Parallel Inquiries
 - Time consuming (as against spirit of criminal procedure)

C. INVESTIGATION OF AML CASES

- Object of investigation is **proceeds of crime** and property not the person
- Proceeds of crime:
 - “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 (§ 2 (xxviii) of MLA Act)
- Use of financial intelligence
 - Cash Transaction Reports
 - Suspicious Transaction Reports
 - Financial Intelligence Reports
 - International Cooperation
 - Formal
 - Informal

D. SELECT CASE LAW

- 1. Hudaibya Paper Mills Case**
- 2. Qazi Faez Isa Case**
- 3. Muahmmad Rafique Case**

1. Hudaibya Mills Case (PLD 2018 SC 296)

“The Final Reference also states that the Respondents 2 and 3 "in order to launder and conceal their ill-gotten wealth" had "opened fictitious foreign currency accounts". It is not clear whether the reference to "launder" wealth is an allegation of "money laundering". JIT's report refers to "money laundering" that took place in 1991-1992. However, money laundering was made an offence in Pakistan when the Anti-Money Laundering Ordinance, 2007 was enacted on September 7, 2007. Neither in the years 1991-1992 nor when the References were filed, in the year 2000, did money laundering constitute an offence. There is another aspect to consider. The term money laundering, as defined in the said Ordinance and then Anti-Money Laundering Act, 2010, state that it emanates from "proceeds of crime". However, NAB doesn't allege that the monies in the foreign currency accounts were proceeds of crime. Additionally, a money laundering case is to be tried by a Session's Court, and not by an Accountability Court under the NAB Ordinance.”

(Para 25)

2. Qazi Faez Isa Case (PLD 2021 SC 1)

“...It is specifically alleged that the petitioner has committed a violation of Section 116 of the Ordinance. This has led to the question of source of funds, the violation of the money laundering regime and the provisions of Foreign Exchange Regulation Act, 1947 ("FERA").”

(Para 25)

2. Qazi Faez Isa Case (PLD 2021 SC 1)

“...A perusal of the Schedule reveals that the non-declaration of assets by a taxpayer under the Ordinance is not a predicate offence under AMLA. Therefore, prima facie no case of money laundering can be made out against the petitioner on this count.”

(Para 108)

3. Muhammad Rafique Case (IHC)

- i) AMLA, 2010 is a special law to deal with prevention of money laundering, combating financing of terrorism and forfeiture of property derived from, or involved in, money laundering.
- ii) All offences defined in *AMLA, 2010*, including the predicate offences specified in Schedule-I of the Act, when committed by any person, has to be tried under *AMLA, 2010*.
- iii) Any asset, property or proceeds of crime, converted into any property, moveable or immovable, by any person derived or obtained directly or indirectly from the commission of offence of money laundering, or used or intended to be used in commission of money laundering, exclusively fall within the ambit of *AMLA, 2010* notwithstanding the previous offences ordinarily committed by an accused person at the first instance, unless the same is included in the 1st Schedule of *AMLA, 2010*.

3. Muhammad Rafique Case (IHC)

iv) Any offence committed by accused person under the Pakistan Penal Code, 1860 or any other law that falls within the definition of a predicate offence in subsequent investigation after discovery of incriminating material, second FIR should be registered.

v) A separate investigation has to be conducted by the investigating agency as defined in Section 2(xviii) of AMLA, 2010.

vi) Anti Money Laundering / Counter Financing of Terrorism Regulatory Authority has been established under this law while dealing with the Financial Monitoring Unit notified by the Federal Government in order to deal with Suspicious Transaction Reports (STRs) and Report on Currency Transactions, prescribed a procedure for furnishing of information by reporting entities qua the customer due diligence (CDD).

3. Muhammad Rafique Case (IHC)

vii) Specialized Investigating Officer be appointed qua the property suspected to be created / obtained / used through proceeds of crime, which shall be attached by the Investigating Officer, shall investigate after due notice to the accused person qua his sources of income, earning or assets in terms of Section 9 of the Act and thereafter the Investigating Officer pursuant to considering the reply declares the property involved in money laundering shall apply to the court for confirmation of the attachment of the property.

viii) The Court under the cases of AMLA, 2010 shall deal with the properties under this Act after giving proper right of hearing to the accused person, proceed with attachment, retention, seizure and forfeiture of the property, even in cases of predicate offences and money laundering after conclusion of the trial.

3. Muhammad Rafique Case (IHC)

ix) Special procedure for seizure and search has been provided separately.

x) The offences are non-bailable and cognizable

xi) Criminal Procedure Code, 1898 is applicable so far as it is not inconsistent with the provision of AMLA, 2010.

xii) The Federal Government may enter into agreement on reciprocal basis with Government of any other country to deal with the investigation and prosecution of any person, exchange of information or any other matter for identifying, tracing of person and properties, including but not limited to attachment, seizure and forfeiture of property, extradition of person, etc.

3. Muhammad Rafique Case (IHC)

xiii) Any person accused in any case under ordinary charges or under any special law, if committed the offence under AMLA, 2010, shall be proceeded separately, even if his subsequent act is part of first FIR or case or offence.

xiv) Both the offences under ordinary law and AMLA, 2010 should have been tried separately having no effect on each others' findings.

xv) The judgment of acquittal in first FIR should not be considered ipso facto beneficial in subsequent FIR / trial under AMLA, 2010.

3. Muhammad Rafique Case (IHC)

xvi) Under AMLA, 2010, burden of proof relating to proceeds of crime involved in money laundering is on the accused, whereas the burden of proof in the scheduled offences is on the prosecution.

xvii) Initiation of proceedings under Pakistan Penal Code, 1860 cannot be compared with AMLA, 2010.

xviii) It is not necessary to arrest the accused at the first instance unless situation so warrants, which may result into disposal, destruction or elimination of property under AMLA, 2010.

xix) Initiation of action under AMLA, 2010 has no implication in respect of the registration of other cases in offences under PPC or any other Special Law.

3. Muhammad Rafique Case (IHC)

xx) AMLA, 2010 has an overriding effect notwithstanding anything inconsistent contained in any other law, the Act shall be in addition to, and not in derogation of Anti-Narcotics Force Act, 1997, Control of Narcotic Substances Act, 1997, Anti Terrorism Act, 1997 and NAO, 1999 and any other law relating to predicate offence.

xxi) The Court of Session established under Criminal Procedure Code, 1898 shall have jurisdiction to try and adjudicate upon the offences punishable under AMLA, 2010. In case where predicate offence is triable by any court other than Court of Sessions, the offence of money laundering and all matters connected therewith shall also be tried by the court trying the predicate offence, unless the Court is not inferior to the Court of Session.

THANK YOU