

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

I.C.A. No.362-2025

Muhammad Uzair Anwar and others
Versus
Federation of Pakistan and others

Appellants by : Barrister Abdul Qadeer, Advocate
(in ICA No.362-2025)
Barrister Abdul Ahad Khokher,
Advocate (in ICA No.360-2025)
Mr Muhammad Fiaz Kandwal,
Advocate (in ICA No.359-2025)
Barrister Mian Ali Ashfaq,
Advocate (in ICA No.361-2025)

Respondents by : Mr Asif Jadoon, AAG.
Mr Wasi Ullah Khan, Advocate
for BoP.

Date of Hearing : **15.10.2025**

Arbab Muhammad Tahir, J.- Through this consolidated judgment we will decide the instant appeal alongwith the following connected matters.-

- (i). ICA No.359-2025, Sajid Nadeem v. Federation of Pakistan and othes
- (ii). ICA No.360-2025, Makhdoom Muhammad Shahab Ud Din and others v. Federation of Pakistan and others
- (iii). ICA No.361-2025, Orya Maqbool Abbasi and others v. Federation of Pakistan and others

2. The appellants, through the Intra Court Appeals preferred under section 3(2) of the Law Reforms Ordinance, 1972 have impugned consolidated judgment dated 11.08.2025 passed by the learned Single Judge

whereby Writ Petitions No.2883, 2882, 2884 & 2885 of 2025 filed by the appellants were dismissed.

3. The relevant facts, per the record, are that any inquiry was initiated by National Cyber Crime Investigating Agency (hereinafter 'NCCIA') on a source report that appellants are involved in online activities in breach of the Prevention of Electronic Crimes Act, 2016 (hereinafter the '2016-Act'). During pendency of the inquiry, the NCCIA forwarded requests to different Banks to freeze the Bank accounts of the appellants, which were acted upon accordingly. The appellants filed writ petitions seeking the relief that the directives issued to the Banks by the NCCIA for freezing of their Bank accounts be declared without lawful authority. The said petitions were dismissed by the learned Single Judge vide the impugned consolidated judgment dated 11.08.2025, hence these Intra Court Appeals.

4. Learned counsel for the for the appellants have argued that the impugned action of the NCCIA is violative of rights of appellants protected under Articles 4, 10A, 19, 24 & 24A of the Constitution; that the appellants were not confronted with any incriminating material before initiating the request of freezing of their Bank accounts; that penalizing the whole families for the alleged wrong of one person is unconstitutional; that the NCCIA is not vested with any power to request Banks for freezing of Bank accounts of citizens; that the impugned order is liable to be set aside.

5. Conversely, learned Assistant Attorney General has argued that the NCCIA is empowered to request the Banks for freezing of the Bank accounts of

citizens allegedly involved in activities in breach of the provisions of 2016-Act; the impugned order is well reasoned; the appeals are liable to be dismissed.

6. Heard. Record perused.

7. The appellants' Bank accounts were frozen by the Banks pursuant to the request of the NCCIA on the grounds that allegedly they are involved in '*uploading of Anti State Contents/Posts on social media and are selling sensitive information to various foreign entities as well as spreading false and misleading information to general public*'. The reasons which prevailed with the learned Single Judge to dismissed the constitutional petitions are that under the provisions of Anti-Money Laundering Act, 2010 (hereinafter '2010-Act') the NCCIA is empowered to order freezing of the Bank accounts coupled with the powers conferred by the provisions of the 2016-Act.

8. In order to address the questions of law raised for our consideration, it would be appropriate to briefly survey the legislative scheme under which the NCCIA exercises its authority.

9. The NCCIA was formerly known as the National Response Centre for Cyber Crimes (NR3C), a subordinate wing of the Federal Investigation Agency. The NCCIA enjoyed the legal cover under the Federal Investigation Agency Act, 1974 (hereinafter '1974-Act'), which *inter alia*, included the powers under section 5 of the 1974-Act. The then NR3C enjoyed the powers simultaneously under the two statutes i.e. 2016-Act as well as 1974-Act. Relevant to the case in hand is the

power under sub section (5) of section 5 of the 1974-Act, which reads as under.-

*"If, in the opinion of a member of the **Agency** conducting an investigation, any property which is the subject-matter of the investigation is likely to be removed, transferred or otherwise disposed of before an order of the appropriate authority for its seizure is obtained, such member may, by order in writing, direct the owner or any person who is, for the time being, possession thereof not to remove, transfer or otherwise dispose of such property in any manner except with the previous permission of that member and such order shall be subject to any order made by the Court having jurisdiction in the matter."*

(Highlighted to add emphasis)

It is significant to mention that the expression 'Agency' is defined in section 2(1) of the 1974-Act as meaning the Federal Investigation Agency constituted under section 3 thereof. Section 3 of the 1974-Act is reproduced below.-

- "3. Constitution of the Agency:
1. Notwithstanding anything contained in any other law of the time being in force, the Federal Government may constitute an Agency to be called the Federal Investigation Agency for inquiry into, and investigation of the offences specified in the Schedule, including an attempt or conspiracy to commit, and abetment of, any such offence.
 2. The Agency shall consist of a Director General to be appointed by the Federal Government and such number of other officers as the Federal Government may, from time to time, appoint to be members of the Agency."

It is thus clear from the above, that the powers conferred by section 5 of the 1974-Act (*freezing of the Bank accounts/property*) are exclusively vested in the officers of the "Agency" i.e. the Federal Investigation Agency.

10. Subsequently, the 2016-Act was amended by Prevention of Electronic Crimes (Amendment) Act, 2025 (the 'Amendment Act'). By virtue of section 6 of the Amendment Act, section 29 of the 2016-Act was substituted; sub section (1) whereof provides that the Federal Government shall establish an investigation agency to be called the National Cyber Crimes Investigation Agency (NCCIA). In pursuance of section 29(5), the Federal Government vide S.R.O. 748(I)/2025, dated 29.04.2025 has duly established the NCCIA for investigation of the offences under the 2016-Act. For the sake of convenience, the same is reproduced below.-

"S.R.O. 748(I)/2025.- In exercise of powers conferred by section 29 of the Prevention of Electronic Crimes Act, 2016 (XL of 2016) read with sub-section (5) thereof, the Federal Government is pleased to establish the National Cyber Crime Investigation Agency for the purposes of Investigation of the offences under the said Act w.e.f. 04-04-2025."

This demonstrates that the NCCIA is now an independent body and no more a subordinate office of the Federal Investigation Agency and has thus stripped of the powers under the 1974-Act, particularly section 5(5) thereof.

11. The NCCIA derives its existence and authority from the 2016-Act. This signifies that the NCCIA shall exercise only those powers, which are delegated to it by the *Majlis-e-Shoora* (Parliament) through the 2016-Act. Likewise, in terms of section 2(xviii) of section 2 of the 2010-Act, the Federal Government vide S.R.O. 1647(I)/2025 dated 28.08.2025 has notified the NCCIA as the investigating and prosecuting agency under the

referred Act. Furthermore, in exercised of the powers conferred by section 42 of the 2010-Act, the Federal Government through S.R.O. 1648(I)/2025, dated 28.08.2025 inserted section XV – *Prevention of Electronic Crimes Act, 2016* in Schedule-I to section 2(xxvi) of the 2010-Act which includes the offences under sections 10, 14, 16, 17, 22, 22A, 22B, 22C and 26A of the 2016-Act.

12. Section 2(xxiii) of the 2010-Act defines the 'offence of money laundering' as the same offence defined in section 3 thereof. The expression '*proceeds of crime*' has been defined in clause (xxvii) of section 2 as meaning any property derived or obtained directly or indirectly by any person from the commission of a predicate offence or foreign serious offence. The term '*predicate offence*' has been defined in clause (xxvi) of section 2 as meaning the offences specified in Schedule-I to the 2010-Act. Section 3 of the 2010-Act provides that a person shall be guilty of the offence of money laundering, if (i) he acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime; (ii) 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; (iii) holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime and (iv) participates in, associates, conspires or commit, attempts to commit, aids, abets, facilitates, or counsels the commission of the referred acts.

13. In terms of section 8 of the 2010-Act, the investigating officer/prosecution agency, with the approval of the "Court", can provisionally attach the property

"involved" in money laundering for a period not exceeding one hundred and eighty days from the date of the order. This period, however, can further be extended for a period of one hundred and eighty days. Sub section (3) of section 8 of the 2010-Act provides that the attachment order passed by the investigating officer shall cease to have effect on expiry of the stipulated period or the time, subject to sub-sections (2) & (3) of section 9 of the 2010-Act. Under section 9(2) if the investigating officer/prosecution agency determines during the investigations that the properties provisionally attached are involved in money laundering, then he shall apply to the Court under section 9(3) of the Act of 2010 for confirmation of the attachment till conclusion of the trial. The expression 'Court' has been defined as Court specified under section 20 of the 2010-Act i.e. the Court of Sessions.

14. Unlike the provisions of 2010-Act and the 1974-Act, the provisions of 2016-Act do not expressly empower the NCCIA to attach, caution or freeze properties of citizens, pending inquiries/investigations. The NCCIA appears to have assumed this power pursuant to rule 5 of the National Cyber Crime Investigation Agency (Function) Rules, 2025 (hereinafter the 'Rules') framed in exercise of powers conferred by section 51 of the 2016-Act read with sections 27 and 29 thereof, notified vide S.R.O 1639(I)/2025 published in the official gazette on 28.08.2025. For the sake of convenience, rule 5 of Rules is reproduced below.-

"5. Powers of the members of the NCCIA.—(1) The NCCIA conducting an inquiry or investigation may freeze a property, directly connected to commission of an offence under the Act.

(2) Prior permission shall be obtained from the authorized officer as designated by the Director General before freezing or de-freezing of the property.

(3) Any contravention of order made under sub-rule (2) shall be punishable under section 174 or 188 of Pakistan Penal Code (Act XLV of 1860)."

15. Bare perusal of sections 27 of 2016-Act shows that the same deals with legal recognition of offences committed in relation to information system. Likewise, section 28 relates to application of provisions of Pakistan Penal Code, 1860 to the offence provided in the 2010-Act. Section 52 of the 2016-Act, however, empowers the Federal Government to make rules for carrying out purpose of the Act, including the subjects mentioned in sub-section (2) thereof, which is reproduced below.-

"51. Power to make rules.— (1) The Federal Government may, by notification in the official Gazette, make rules for carrying out purposes of this Act.

(2) Without prejudice to the generality of the foregoing powers, such rules may specify,—

- (a) qualifications and trainings of the officers and staff of the investigation agency and prosecutors;*
- (b) powers, functions and responsibilities of the investigation agency, its officers and prosecutors;*
- (c) standard, operating procedures of the investigation agency;*
- (d) mode and manner in which record of investigation under this Act may be maintained;*
- (e) manner to deal with the seized data, information system, device or other articles;*
- (f) working of joint investigation teams;*
- (g) requirements for seeking permission of the Authority to change, alter or re-programme unique device identifier of any communication equipment by any person for research or any other legitimate purpose;*

- (h) *procedure for seeking appropriate order of the Authority for removal, or blocking of online content;*
- (i) *constitution of computer emergency response team and the standard operating procedure to be adopted by such team;*
- (j) *appointment of designated agency having capability to collect real time information;*
- (k) *manner of coordination between the investigation agency and other law enforcement and intelligence agencies including designated agency;*
- (l) *for management and oversight of the forensic laboratory;*
- (m) *qualifications and trainings of the officers, experts and staff of the forensic laboratory;*
- (n) *powers, functions and responsibilities of the forensic laboratory, its officers, experts and staff;*
- (o) *standard operating procedures of the forensic laboratory to interact with the investigation agency;*
- (p) *manner of soliciting and extending international cooperation;*
- (q) *matters connected or ancillary thereto; and*
- (r) *provision of fines for contravention of the provisions of this Act and rules made thereunder."*

16. It is highlighted here that the collection and preservation of data/evidence relating to the commission of offences under the 2016-Act is different from freezing of the properties i.e. Bank accounts of persons, for which express sanction of the Legislature in the parent statute i.e. 2016-Act is required. There is plethora of judgments¹ that subordinate legislation shall neither be in conflict with

¹ *Mian Zaiuddin v. Punjab Local Government and others* [1985 SCMR 365], *Khawaja Ahmed Hassan v. Government of Punjab and others* [2005 SCMR 186], *Suo Motu Case No.11/2011, in the matter of National Police Foundation Land* [PLD 2014 SC 389], *Suo Motu Case No.13/2009* [PLD 2011 SC 619], *Zarai Taraqiati Bank Limited and others v. Said Rehman and others* [2013 SCMR 642], *Farrukh Raza Sheikh v. The Appellate Tribunal Inland Revenue and others* [2022 SCMR 1787], *Khawaja Ahmad Hassan v. Government of Punjab and others* [2005 SCMR 186].

the provisions of parent statute nor travel beyond its permissible scope and that the rule making authority shall not act as *Majlis-e-Shoora* (Parliament) to assume powers not delegated by the parent law. Rules 5 of the Rules thus appears to have been framed in excess of the powers delegated by sections 27, 28 and 51 of the 2016-Act.

17. The NCCIA appears to have diverted the process prescribed under the 2010-Act. In case, the NCCIA was of the view that the amounts available in the Bank accounts of the appellants were the proceeds of crime (*as defined section 2(xxvii) of 2010-Act*) or derived out of the predicate offences (*as provided in section XV of Schedule-I to section 2(xxvi) of the 2010-Act*) then the proper course was to obtain an order of the Court in terms of section 8 of the 2010-Act.

18. The inquiry was initiated by the NCCIA on the basis of its own source report, which did not bifurcated the roles of each appellant in the commission of alleged offences, if any. In fact, a detailed inquiry was required to be conducted by associating the appellants in the process, disclosing the allegations on the basis whereof the NCCIA initiated criminal proceedings under the 2016-Act. Instead, the NCCIA proceeded in haste and directly approached the concerned Banks for freezing of the Bank accounts of appellants, which may affect their rights to property, livelihood and life guaranteed under the Constitution. Further, the nature of allegations required detailed probe and it is for the trial court, if a criminal case is subsequently filed, to strike a balance between the right of appellants protected Article 19 of the Constitution and the provisions of the 2016-Act. In the attending circumstances, we conclude that the impugned action of

NCCIA whereby the Bank accounts of appellants were blocked on the basis of its own source report was disproportionate, harsh and unreasonable, particularly to the extent of family members of persons regarding whom the allegations were leveled. The impugned judgment is, therefore, liable to be set-aside.

19. For what has been discussed above, the Intra Court Appeals are allowed. Consequently, the impugned judgment is hereby set-aside. The respondents are directed to unfreeze/unblock the Bank accounts of the appellants forthwith. The NCCIA is directed to proceed with the inquiry strictly in accordance with law.

(INAAM AMEEN MINHAS)
JUDGE

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in the open Court on .10.2025.

JUDGE

JUDGE

Approved for reporting.

Luqman Khan/*