

~~Enr~~ No ATA: Case to Ordinary Court 306

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

**CR. REV (D)-33 of 2022
MUQEEM & ANOTHERS VS THE STATE**

SINDH HIGH COURT, CIRCUIT COURT HYDERABAD

COMPOSITION OF BENCH

**HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA
HON'BLE JUSTICE MRS. KAUSAR SULTANA HUSSAIN**

(D.B.)

Date of last hearing (heard/reserved): 16-02-2023
Decided on: 02-03-2023

(a) Judgment approved for reporting

YES

Khy

C E R T I F I C A T E

Certificate that the Judgment/Order is based upon or enunciates a principle of law/decide a question of law which is of first impression/distinguishes over-rules/explains a previous decision.

Strike-out whichever is not applicable.

NOTE: -

- (i) This slip is only to be used when some action is to be taken.
- (ii) If the slip is used, the Reader must attach it to the top of the first page of the Judgment.
- (iii) Court Associate must ask the Judge written the judgment whether the judgment is approved for reporting.
- (iv) Those directions which are not to be used should be deleted.

SGP, Kar-L (iii) 773-2000-4-2003-III

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6952
11/10/2022

PRESENTED ON 11.10.2022

Additional District Judge

IN THE HIGH COURT OF SINDH CIRCUIT HYDERABAD

Crl. Revision Appl. No. D: 33 of 2022.

1. **Muqem** S/o Mehon Khan Khaskheli
2. **Mushtaque** S/o Hajjan Manjotho
3. **Ghulam Mustafa** S/o Ali Murad Marri
4. **Ghuam Shabir** S/o Muhammad Ramzan Mari
5. **Lutuf** S/o Dhani Parto Mari

(All confined at Central Prison Shaheed Benazirabad)

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Applicants
Accused

V E R S U S

1. **Muhammad Aban**
S/o Budho Khan
b/c Bhand R/o Village Ismail Bhand
Taluka Qazi Ahmed

2. **The State**

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Respondent

Crime No.03 OF 2022
U/s 302, 324, 147, 148, 149, 337Hii
R/W 6/7 ATA 1997
Police Station Mirzapur

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ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Criminal Revision Application No.D- 33 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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16.02.2023.

Mr. Ishrat Ali Lohar, Advocate for applicants.
Mr. Meer Ahmed Mangrio, Advocate for respondent No.1.
Mr. Shahzado Saleem Nahiyoon, Additional Prosecutor General for
State.

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We have heard the learned counsel for applicants, learned counsel
for respondent No.1 as well as learned Additional P.G for State. Reserved
for orders.


JUDGE


JUDGE

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No ATA Case to Ordinary cts

IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD

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Cr. Rev. Appl. No.D- 33 of 2022

DATE ORDER WITH SIGNATURE OF JUDGES

1. For orders on office objection.
2. For hearing of the main case.
3. For hearing of M.A- 8955 of 2022 (stay application)

Mr. Ishrat Ali Lohar, Advocate for the applicants.

Mr. Meer Ahmed Mangrio, Advocate for respondent No.1

Mr. Shahzado Saleem Nahiyoona, Additional Prosecutor General, Sindh.

Date of hearing: 16.02.2023

Date of order: 02.03.2023

ORDER

MOHAMMAD KARIM KHAN AGHA, J.-Through instant criminal revision application, applicants have assailed the order dated 05.09.2022, passed by the learned Judge, Anti-Terrorism Court, Shaheed Benazirabad, in Special Case No.06 of 2022, whereby the learned Judge had dismissed the application, moved on behalf of the applicants/accused u/s 23 of Anti-Terrorism Act, 1997, for transfer of the case from the Court of learned Judge, Anti-Terrorism, Shaheed Benazirabad to any other Court of ordinary jurisdiction.

2. Facts of the case as stated in the FIR are as under:-

*"Complaint is that I am an Agriculturalist (Hari) at Deh Dambalo (Kacho) where my mustard, rice and wheat crops are sowed. That on 12-02-2022, I along with No.1 Akmal S/o Ali Akhbar Bhand age 30 years, No.2 Saban S/o Dayo Khan Bhand age 42, No. 3 Sher Muhammad alias (Toh) S/o Khan Muhammad Bhand age 70 years, No.4 Mashoq S/o Khuda Bux Bhand age 42 years, **we all were working at our lands that at about 11 O'clock in the morning and the people working with us were** No.1 Khadim Sangra, No.2 Gulsher S/o Allah Dino Bhand, No.3 Akhtar S/o Akhtar Bhand, No.4 Aijaz S/o Ali Bakhsh Sangra, No.5 Mst Saban W/o Late Ghulam Mustafa Bhand, No.6 Kashif S/o Roshan Bhand, No.7 Deedar S/o Bachal Sangra, No.8 Hajan S/o*

Bahadur Bhand, No.9 Qurban S/o Biyo Bhand, were present at the spot of each one namely No.1 Mohsin S/o Zakir Hussain Zardari equipped with Kalashnikov, No.2 Abid S/o Ghulam Haider Zardari equipped with Repeater, No.3 Shahzado S/o Soomar Zardari equipped with repeater, No.4 Ali Muhammad S/o unknown Zardari, No.5 Qayoom S/o Akhbar Zardari with repeater, No.6 Mugeem S/o Mehoun Khan Zardari with Reaper, No.7 Haq Nawaz S/o unknown Zardari with repeater, No.8 Ghulam Shabbir S/o Muhammad Ramzan Zardari with repeater, No.9 Mustaq S/o Hajan Maletho with repeater, No.10 Ghulam Mustafa S/o Ali Murad Mari with repeater, No.11 Imran S/o Aleem Khan Rind with repeater, No.12 Lutuf S/o Dhani Parto Mari with repeater, No.13 Allah Warayo alias Waro S/o Allah Dino Zardari with Kalashnikov **came to us hurling threats of dire consequences and said to leave the homes and land or otherwise we will kill you**, on that Mohsin Zardari opened fire of Kalashnikov at Akmal Bhand who fell down after injured from gunshot wound, Shehzado Zardari open fire of repeater at Saban Bhand who feel down, Ali Muhammad Zardari opened fire of Rifle at Sher Muhammad alias Muhammad alias Doh Bhand who fell down, Ali Muhammad Zardari also opened fire of Rifle at Sher Muhammad Bhand alias Doh Bhand who also fell down, Mugeem Zardari also opened fire of repeater at Khadim Sangra who fell down with yelling, Mugeem Khaskheli also opened fire at Gulsher who also fell down with yelling, Haq Nawaz Zardari also fire of repeater at Akhtar Bhand who fell down with yelling, Ghulam Shabir Zardari also opened fire of repeater at Aijaz Sangra who fell down yelling, Mushtaq also opened fire at Mst. Saban who fell down, Ghulam Mustafa Mari opened fire at minor Ashfaq Bhand age about 3 years who fell down with hue and cry, Imran Rind opened fire of repeater at Faiza who fell down with yelling, Lutuf Mari opened fire of repeater at Hajan Bhand who missed the shots and Allah Warayo Zardari who opened fire of Kalashnikov at Qurban Bhand who fell down and all accused harassed us with aerial firing at time intervals and left the place of incident and we went and saw that Akmal from left side of chest K.T.O injured from gunshot wound, Mashoq Bhand injured from front right side of head by gunshot wounds and blood was bleeding and Saban Bhand injured from left leg gunshot wound died from bleeding and Gul Sher Muhammad alias dead from the gunshot wound of front head from bleeding and police constable SHO Abdul Majeed Khoso who from the wounds of right knee died from excessive bleeding and deceased and injured were taken quickly to Qazi Ahmed Hospital were the Post-Mortem of the deceased were done and injured were also treated and referred Nawabshah Civil Hospital, thereafter we took the bodies of the deceased to our village and where we did the burial and funeral ceremony and after that we are present at P.S and above mentioned accused equipped with weapons did aerial firing and Akmal Bhand, Mashoq Bhand, Saban Bhand and Sher Muhammad alias Toho Bhand, Police officer Abdul Hameed Khoso are killed and others mentioned are injured."

3. After hearing the learned counsels for the parties, learned trial Judge has passed the impugned order, and being aggrieved by the same, the applicants have preferred this revision application.

4. Learned counsel for the applicants has contended that the case does not fall within the purview of the Anti Terrorism Act 1997(ATA) mainly on two counts. Firstly, that it was a case of personal enmity/vendetta/dispute between the parties and secondly, that the acts which the applicants have been accused of did not have the intent, object, design or purpose to create terror and as such the case should be transferred from the Anti Terrorism Court to the court of ordinary jurisdiction to try the offences under the PPC. In support of his contentions, learned counsel for the applicants placed reliance on the cases of **Ghulam Hussain and other V The State and others** (PLD 2020 Supreme Court 61), **Ali Gohar and others V Pervaiz Ahmed and others** (PLD 2020 Supreme Court 427), **Mst. Sughran Bibi V The State** (PLD 2018 Supreme Court 595), **Murad alias Mann V Manzoor Ahmed and another** (PLD 2022 Sindh 209), **Abdul Rasheed alias Somi V The State and another** (2020 PCr.LJ 714) as well as Photostat copies of two orders passed by this Court in Cr. Rev. A. No.D-35 of 2022.

5. Learned A.P.G as well as the learned counsel for respondent No.1 have jointly argued the case and fully supported the impugned order contending that in the present matter except private persons one police officer namely SIP Abdul Hameed while performing his official duties has also lost his life after receiving firearm injuries at the hands of accused persons, hence the case fell squarely within the ambit of the ATA as the actions of the accused met the requirements of S.6(2) (n) and (m) of the ATA, which concern (m) serious coercion and intimidation of a public servant in order to force him to discharge or refrain from discharging his lawful duties and (n) concerns serious violence against a member of the police force, armed forces or civil armed forces or a public servant; that it was not a case of personal enmity/vendetta and the incident caused a great deal of terror

through the gravity of the offences which lead to the case falling squarely within the purview of the ATA and as such the application should be dismissed. In support of their contentions they also placed reliance on the case of **Ghulam Hussain and other V The State and others** (PLD 2020 Supreme Court 61),

6. We have considered the arguments of learned counsels for the parties, perused the record and the case law cited by them at the bar.

7. Since this Revision Application in essence challenges the impugned order not to transfer this case from the court of ATC to an ordinary Court, we intend to restrict ourselves to the basic point whether as a matter of law based on the facts and circumstances of the case the actions of the accused brought their case within the ambit of the ATA.

8. In order for an act to come within the purview of the ATA two requirements need to be met under Section 6 of the ATA.

(a) Firstly, the act must fall within the meaning of any of the sub clauses set out in S.6 (2) of the ATA. Based on the facts and circumstances of this case it is extremely likely as alluded to earlier by the learned counsel for the respondent and learned APG that some of the acts of the accused might fall at least within S.6 (2) (n) and (m) ATA **and**

(b) Secondly the act must also **either** fall within S.6 (1) (b) **or** (c) of the ATA which are set out below for ease of reference.

(b) the use or threat is **designed** to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or a foreign government or population or an international organization or create a sense of fear or insecurity in society; **or**

(c) the use or threat is made for the **purpose** of advancing a religious, sectarian or ethnic cause or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies:

Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.

9. In the case of **Ghulam Hussain V State** (PLD 2020 SC 61) a larger 7 member bench of the Supreme Court after a detailed analysis of the ATA and the law of terrorism both domestically and internationally held as under at P.131 para 16;

*"For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as terrorism within the meaning of section 6 of the Anti Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act **and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act** or the use or threat of such action must be to achieve any of the **purposes** mentioned in clause (c) of subsection (1) of section 6 of that Act. It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism **if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act.** It is further clarified that the **actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta.**(bold added).*

10. At the out set it should be noted that one police man was killed during this incident and his case was tried before the ATC which ultimately lead to the acquittal of the accused in that case. We need not comment here on whether that case was rightly tried before the ATC court as that matter is not before us. The question before us is whether this case should be tried before the ATC or before an ordinary court having jurisdiction based on the particular facts and circumstances of this case.

11. It is quite clear from the above excerpt of **Ghulam Hussain's case** (Supra) that the act as defined in Section 6 (a) (2) must be **designed** or its **purpose** must be to create the consequences which follow in Section 6(1) (b) and (c) **and that cases of personal enmity/private vendetta do not fall within the ATA.**

Did the Acts in this case fall within the purview of the ATA keeping in view Section 6(1) (b) and (c) of the ATA and Ghulam Hussain's case (Supra)?

12. It is now well settled that actions taken in pursuant to personal enmity and private vendetta do not come within the purview of the ATA. The case record reveals that there is a great rivalry/enmity between the two parties over the piece of land which the applicants tried to take over which has been raging for some years with litigation between the parties over this disputed piece of land going back to at least 2013 in this regard **as per record a plethora of FIR's have been registered and other cases in respect of this dispute between the parties.** In this case alone 3 separate FIRs were lodged and due to distrust between the parties and the alleged influence of the applicants the respondents moved numerous CP's before this court including one of 2013 to have it appears an independent investigation officer appointed to ensure a fair investigation in this case. This lead to order dated 24.03.2022 which was passed by this Court which is reproduced as under;

"ORDER DATED 24.03.2022, PASSED IN C.P No.D-352 of 2013, C.P No.D-1832 of 2021 AND C.P No.D-1913 of 2021

At the outset, learned counsel for the petitioner(s) contend that due to dispute over agriculture land, police officials had lodged false case(s) against the petitioner(s) as private respondents are influential and backed by the present government, hence in the interest of justice to assign the false F.I.R(s) bearing Crime No. 28 of 2013 registered at police station B-Section S.B.A and F.I.R No.02 of 2013 and 03 & 04 of 2022 registered at police station Mirzapur S.B.A, for investigation by any competent officer. Learned Addl. A.G Sindh extends his no objection with regard to transfer of investigation by any competent officer. Under these circumstances, I.G.P Sindh shall transfer / assign investigations of above referred F.I.R(s) to Mr. Siraj Lashari (DSP) who shall conduct impartial enquiry / investigation preferably within one (01) month and shall submit report before the competent Court as well before this Court. S.S.P Shaheed Benazirabad shall provide all logistic support to the Investigating Officer.

With regard to arrest of absconding accused in F.I.R Nos.3 & 4 of 2022 registered at police station Mirzapur District Shaheed Benazirabad. The S.S.P Shaheed Benazirabad shall ensure arrest of accused within the spirit of Nasarullah's case reported in PLD 2016 page 238 Sindh whereby adopting coercive

measures including blockage of their CNIC(s), bank account(s), attachment of properties and other modes; in case of failure he would face the legal ramifications.

Besides, D.I.G.P Hyderabad Division is directed to provide protection to the complainant party in above referred F.I.R(s) hence, he shall depute a team comprising of competent officers who shall personally visit the site / houses of the complainant party and ensure that no bodily harm is caused to them in any manner.

At this juncture, learned Addl. A.G Sindh contends that these petitions are pending since 2013 and 2021 whereas petitioners are seeking enquiry of F.I.R(s) registered in 2022. Since the dispute is same between the parties earlier many F.I.Rs were lodged by the rival parties hence, subsequent events can be considered by this Court, this objection is deferred.

To come up after one (01) month. Office shall communicate this order to the concerned quarter for compliance. (bold added)

Sd/- Judge

Sd/- Judge"

13. Based on the above order it appears that as admitted by the respondents in this case a dispute over the land which the applicants tried to take over by force has been pending for numerous years and there is various litigation in respect of the same between the parties since at least 2013 over such land.

14. In any event this court by virtue of the above order appointed DSP Mr. Siraj Lashari as an independent investigation officer in this case to whom none of the parties had any objection.

15. The investigation report of DSP Siraj Lashari who was appointed by this court as an independent and impartial investigator with the approval of the parties found that the incident in effect arose out of an age old land dispute between the two communities. The result of his investigation is set out below in material part as under;

"Result of Investigation: The investigation of above said case has been carried out impartially, in light of the investigation it has been transpired through the statements of complainant, witnesses and arrested accused persons, the post mortem report, Medical Certificates, video recording, site of incident and through concerned documents related with

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the case and through hidden and overt investigation the facts and circumstances have been uncovered that the agriculture land situated in Katcha Area, Deh-Bhambhai, Taluka Qazi Ahmed of Bhand & other community was under cultivation, since year 2012, the land in question consist of approximately 400 Acers, which Zardari community attempted to illegally occupied it, on which, the Bhand community approached the court, due to which those persons left the possession and went away but the land in question remained bone of contention between two communities, in the month of November, 2021, Mohsin Zardari with the help of his accomplices forcibly occupied the said land, in response the Bhand Community made protests demonstrations and sit-in. Thereafter, gathering/meeting was held between both parties for dispute resolution in which the arbitrator made the decision that the documents of land in question may be scrutinized and till then no party shall go to the land in question, albeit the said land shall be kept in Government custody, then personnel of the police was deputed on the said land for peace. After the decision, Mohsin Ali Zardari denied the decision and let his persons/companions stationed on the said land, it is claimed by both the parties that either party has cultivated the present crop season, on the day of incident the persons of Zardari community and other communities duly armed resorted to cut mustard crop cultivated on disputed land but they were restrained by the people of Bhand community and they also complained with the Police contingent present there about armed persons, in the meantime, the people of Bhand community started gather there and they engaged in heated words/arguments with people of Zardari community and other communities, the police tried to calm the situation, meanwhile each namely Ghulam Shabbir S/o Muhammad Ramzan Zardari (2) Ghulam Mustafa S/o Ali Murad Mari (3) Mugeem S/o Menhoon Khan Khaskheli (4) Lutuf S/o Dhani Parto Mari (5) Mushtaque S/o Hajan Majo Taho (6) Mohsin Ali s/o Zakir Hussain Zardari (7) Abid Hussain S/o Ghulam Hyder Zardari (8) Shahzado S/o Somar Zardari (9) Ali Muhammad S/o Ali Nawaz Zardari (10) Qayoom S/o Akber Zardari (11) Haq Nawaz S/o Sono Khan Zardari (12) Allah Warayo @ Waro S/o Allah Ditto Zardari (13) Imran Khan S/o Haleem Khan Rind opened straight firing upon the people of Bhand community and other communities, as a result deceased persons each Akmal Bhand, Mashooque Bhand, Saban Bhand, Sher Muhammad @ Tooh Bhand, Ayaz Bhand and Police Officer Abdul Hameed Khoso were killed, whereas, Khadim Sangrah, Gul Sher Bhand, Akhter Bhand, Aijaz Sangrah, Deedar Sangrah, Mst. Sabul, minor Kashif Bhand, Qurban Bhand, Qadir Bukhsh Bhand, Asif Bhand and Amin Bhand were left injured due to hitting of firing. The case of incident as bearing Crime No. 03/2022 U/s 302-324-147-148-149-337H(ii)- PPC was lodged with Police Station Mirzapur on the complaint of

complainant Muhammad Aban Bhand against the said persons mentioned from serial No.1 to 13 on dated 14-02-2022 at time 2300 Hrs, wherein, the names of deceased persons each Akmal Bhand, Mashooque Bhand Saban Bhand, Sher Muhammad @ Tooh Bhand, SIP Abdul Hameed Khoso and injured persons each namely Khadim Sangrah, Gul Sher Bhand, Akhter Bhand, Aijaz Sangrah, Deedar Sangrah Mst. Sabul, minor Kashif Bhand, Qurban Bhand were mentioned, in the case bearing Crime No. 03/2022 of Police Station-Mirzapur the date 12-02-2022 and time of incident shown from 1100 Hrs to 1400 Hrs, during the course of investigation each namely Ghulam Shabbir S/o Muhammad Ramzan Zardari (2) Ghulam Mustafa S/o Ali Murad Mari (3) Mugeem S/o Menhoon Khan Khaskheli (4) Lutuf S/o Dhani Parto Mari (5) Mushtaque S/o Hajan Majo tahoo were arrested, on their indication the arms used in the commission of offence were recovered and the separate cases bearing Crime Numbers from 09 to 12 year 2022 have been registered U/s 25 Sindh Arms Act with Police Station-Mirzapur".

16. Thus, we find that this is a case of personal enmity/ vendetta arising out of a land dispute between the parties as evidenced by the FIR, litigation between the parties over a long period of time and the report of DSP Lashari who was appointed by this court as an independent investigator largely at the behest of the respondent party in this application and as such the case does **not** fall within the purview of the ATA.

17. Even otherwise, if we assume that some acts fall under the actus reus of terrorism in this case under Section 6(a) (2) ATA for this case to come within the purview of the ATA it must still be proved or inferred that the acts were **designed** or their **purpose** was to create the consequences which follow in Section 6(1) (b) and (c).

18. Now based on the particular facts and circumstances of this case as discussed above we find that there was **no design** to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect ¹[or a foreign government or population or an international organization] or create a sense of fear or insecurity in society or the **purpose** of advancing a religious, sectarian or ethnic cause ²[or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including

damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies].

19. **This is because the evidence/material on record tends to suggest that the incident occurred with the design and purpose of one community taking over the land which had been under dispute between the parties for years on end and not to create terror.**

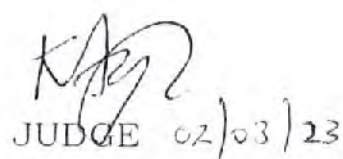
20. As was held in the case of **Ghulam Hussain** (Supra) the gravity of the offence does **not** lead to the offence automatically coming within the purview of the ATA **nor** is it relevant that the by product of the act might have created terror **if there was no design or purpose to do so** and in this regard we find that the impugned order labeled the acts as terrorism due to their grave nature and the by product of the act tending to make the public fearful with out looking behind the true design and purpose of the incident which was to grab disputed land.

21. As such the criminal revision application is allowed, the impugned order is set aside and the Anti Terrorism Court Shaheed Benazirabad is **directed** to transfer Special Case 06/22 along with R&P's and complete record immediately to the District and Sessions Judge Benazirabad who shall try the case or refer it to an Additional District and Sessions Judge for trial **only** in respect of the offences under the PPC and **not** for any offence under the ATA which offences are struck out of the charge.

22. A copy of this order shall be sent to Anti Terrorism Court Shaheed Benazirabad for immediate compliance.

23. The criminal Revision application is disposed of in the above terms.


JUDGE


JUDGE 02/03/23