

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

Cr.Rev.Appl.No.D- 187 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For Katcha Peshi.
3. For hearing of MA 7848/2016.

17.08.2017.

Mr. Sajjad Ahmed Chandio, Advocate for applicants.  
Mr. Shahzado Saleem Nahiyoon, D.P.G. for the State.  
Complainant present in person.

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**SALAHUDDIN PANHWAR, J:** Through instant Criminal Revision Application, the applicants/accused persons have challenged the order dated 15.10.2016 passed on application u/s 23 of ATA, 1997, whereby the plea of applicants regarding jurisdiction was turned down.

2. Brief facts of the case are that on 16.09.2014, at about 1400 hours complainant Abdul Qadir lodged F.I.R, stating therein that “on 13.09.2014, he alongwith his brother Bahadur aged about 42/43 years came to home after closing the Boring Machine at evening time. On 14.09.2014 he alongwith his brother Bahadur went to field where they found that Oil Engine was missing; complainant alongwith his brother Bahadur, relatives Aziz Ahmed and Gulzar Ali as well other villagers chased the foot prints of thieves which led them towards house of Nadir Jatoi, that Nadir Jatoi having G-3 Rifle came out from his house and started firing; that complainant party due to empty handed, returned towards their houses; while they near the agricultural land of Waris Korejo, Nadir having G-3 Rifle, Yad Hussain armed with kalashnikov, Qamber armed with G-3 Rifle, Zangi alias Jabbal armed with kalashnikov, Allahyar having repeater surfaced and started firing from their respective weapons, spread terror and fear and asked the complainant to stop; complainant party stopped;

thereafter, accused Nadir Jatoi made straight fire from his G-3 Rifle which hit on the face of Bahadur, who after receiving such fire shot injury fell down; accused Qamber Jatoi also made fire from his G-3 Rifle by keeping the same on the chest of Bahadur, on which the persons of the village and shopkeepers tried to run towards the complainant party.

3. Learned counsel for the applicants *inter alia* contends that previous enmity is admitted between the parties; accused party lodged FIR No.8/2014 u/s 397, 337-H(ii), 504 PPC as well FIR No.13/2014 u/s 435, 147, 148, 149, 504, 337-H(ii) PPC at Police Station Aminyani District Dadu against the complainant party; one case has been disposed of and one case is pending; there is compromise between the parties; complainant is present, admits that there is compromise and he has no objection for transfer of this case to the ordinary court, enabling them to file compromise application and resolve their issue on permanent basis. Learned counsel for the applicants relied upon the cases reported as PLD 2001 Supreme Court 521, PLD 1972 Supreme Court 271, PLD 1978 Quetta 187, 2007 SCMR 142, 2008 SCMR 1631, 2016 P.Cr.L.J 961 and an unreported order dated 27.09.2016 passed by this court in Cr.Rev.Appl.No.D-56/2016. As well unreported judgment of apex court passed in criminal appeals number 127/j, 128/j 2007

4. While, Mr. Shahzad Saleem Nahiyoon, learned D.P.G. contends that *prima facie* this is a case of terrorism and FIR is not disclosing enmity between the parties hence the impugned order is in accordance with law.

5. Heard and perused. We have also examined the entire material available on record.

6. There is no cavil to the proposition that while deciding the issue of jurisdiction, courts are required to examine FIR, 161 Cr.P.C statements,

mashirnamas and other documents available with the prosecution. Reference may well be made to the case of Kashif Ali PLD 2016 SC 951 wherein it is held as:

**'12. ...In order to determine whether an offence falls within the ambit of Section 6 of the Act, it would be essential to have a glance over the allegations leveled in the F.IR, the material collected by the investigating agency and the surrounding circumstances, depicting the commission of offence. Whether a particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said act has to be seen.**

The inclusion of surrounding circumstances, depicting the commission of the offence, *prima facie* permits taking into considering the documents / material, came onto surface with regard to the previous enmity or the dispute. A *deliberate* act of the complainant to conceal the *old enmity / private vendetta* alone would never be sufficient to prejudice right of an *accused* for his trial before *ordinary* Court. Thus, we find no substance in the *plea* of the learned DPG that since fact of *old enmity* is not disclosed in FIR hence same cannot be considered.

7. We have seen two FIRs which show that the motive of this incident is *prima facie* old blood feud between the parties which has always been considered as one of the *circumstances* to bring a case out of scope of *terrorism* because normally in such like matter the *prime* object is always to settle personal score rather than creating a sense of *terrorism*. Exception to this *however* can well be if the accused designs their act in such a manner or fashion. The question of *jurisdiction* shall never be dependant upon consent or wish of a party but shall always be decided / determined on *defined* criterion. An act of compromise for promoting *harmony* between *two* is always worth appreciating but this alone would never be *decisive* for determining question of *jurisdiction* of Special Court. Worth to add here that each and every case of *murders* are not required to be sent to the Anti Terrorism Court because , as already stated, it is not the whims and wishes of a *party* but defined criterion, therefore, the Anti Terrorism Court is required to examine minutely the ingredients of terror and terrorism.

Since, in the instant case it came to surface that fact of old enmity / private vendetta was deliberately concealed by complainant so as to give *jurisdiction* to Special Court hence in such eventuality *no objection*, given by complainant at such stage, *may* be taken as one of the *circumstances* for determining jurisdiction. Further, the *exceptions* defined for taking cognizance by *Special Court* even in existence of private vendetta between parties *prima facie* are not available. Accordingly, we, in view of touch stone laid down by apex court in unreported case (supra), the other FIRs, lodged by the applicant party and compromise between the parties as well place of the incident and the manner in which the incident has happened, hold that this is not a case of terrorism. The instant criminal revision application is allowed *accordingly*. Anti Terrorism Court shall return the case to the ordinary court having its jurisdiction.

JUDGE

JUDGE

Tufail