

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

**Special Criminal ATA No. 19 of 2013  
Criminal Revision Application No. 40 of 2014  
Special Criminal ATJA No. 24 of 2013  
Special Criminal ATA No. 25 of 2013**

Date	Order with signature of Judge
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1. For order on MA No.6197 of 2013
2. For order on MA No. 6198 of 2013
3. **For hearing of main case.**

**28<sup>th</sup> November, 2017**

Mr. Mehmood A. Qureshi, advocate for the appellant in Spl. Cr. ATA No. 19 of 2013.

M/s. Haq Nawaz Talpur & Abbas Rasheed Rizvi, advocates for the appellant in Spl. Cr. AT No. 25 of 2013.

Mr. Mehmood Alam Rizvi, advocate for the appellant.

Mr. Abdul Amir Raza Naqvi, advocate.

Mr. Abdul Razzak, advocate for the appellant.

Mr. Farooq H. Naik, advocate for the applicant in Criminal Revision Application No. 40 of 2014.

Mr. Shahadat Awan, Prosecutor General.

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Mr. Wazeer Hussain Khoso, advocate files Vakalatnama on behalf of appellant in Spl. Criminal AT Jail Appeal No. 24 of 2013, taken on the record.

2. At the very outset, learned counsel contends that in view of Waris Ali case [2017 SCMR 1572] this is not a case of terrorism. He has referred paragraphs No. 8 to 25 whereby the crimes committed due to private revenge or to say traditional crimes, cannot be dragged into the fold of terrorism and terrorists activities. Per him, this was *allegedly* a case of

personal vendetta which *even* was so concluded by trial Court. For this he has referred judgment of the trial Court, wherein, motive decided by the trial Court. According to him, that is available at page No. 86 of the impugned judgment, which is that:

*“The motive of the murder is the quarrel which took place between the deceased and the accused at the reception of the Country Club Apartments. As mentioned above the unfortunate episode started with the misbehavior of the cook (accused Ghulam Murtaza Lashari) with Miss Maha sister of the deceased. Naturally, the deceased must have become angry on such behavior and quite probably, as has also been suggested by the defense counsel in the cross examination of Mrs. Ambreen he had slapped/beaten him. Non acceptance of apology tendered by the deceased and demand of the accused for allowing the cook to slap the deceased simply demonstrates their feudal bent of mind. In order to establish that they were all powerful and above the law, they decided to eliminate the deceased and set-out to hunt him. Indeed, out of the three events in the series one giving rise to the other, the second is the motive of the offence rendering sufficient corroboration to the last event of firing resulting into the death of the deceased,”*

therefore, this was the case of ordinary Courts not Special Courts. Although this point was decided during trial by this Court in Revision No. 43 of 2013 which was assailed before Hon’ble Apex Court, wherein, the leave was refused with the observations that:-

*“As the question and jurisdiction can now well be agitated before the Appellate Court seized of the matter.”*

3. Whereas, learned counsel for the complainant contends that a compromise has also arrived between parties and since per case of Waris Ali supra this is not a case of *terrorism* hence compromise be accepted.
4. Learned Prosecutor General however contends that in this matter compromise application under Section 345 (2) Cr.P.C was filed and same was entrusted to the trial Court for its genuiness, after recording the evidence of trial Court has submitted report that compromise is genuine.
5. Mr. Mehmood Alam Rizvi also affirms that in fact compromise was affected in his office, hence, in this case compromise can be accepted.
6. Whereas, at the other hand, Mr. Farooq H. Naek, learned counsel appearing in Criminal Revision Application No. 40 of 2014 contends that trial Court wrongly concluded that applicant is not juvenile, whereas, as per qualification, academic certificates and other documents he (*applicant*) , per him, is juvenile. However, if the Court is going to *remand* back the case he does not press the instant revision application.
7. Heard the respective parties and perused available record *carefully*.

8. Before going into merits of *moot* issue, it would be relevant to add that question of *jurisdiction* was raised during trial which went upto Apex Court wherein, the leave was refused with the observations that:-

*“As the question and jurisdiction can now well be agitated before the Appellate Court seized of the matter.”*

hence *legally* the question can well be examined, so we proceed, accordingly.

9. We have perused judgment of Waris Ali case. At this juncture, direct referral to relevant portions of the *judgment*, being material, are made hereunder:-

11. True, that the offences contained in the Schedule to the Anti-Terrorism Act would fall within the definition of terrorism and terrorist activities but the crimes committed due to private revenge or to say traditional crimes, cannot be dragged into the fold of terrorism and terrorists activities.

12. The mere fact that the crimes for personal motive are committed in a gruesome or detestable manner, by itself would not be sufficient to bring the acts within the meaning of terrorism or terrorist activities. The Courts of law should not lose sight of the fact that terrorism and terrorist activities are committed and are carried out by a person group of persons and well equipped organizations, whose primary aim and object is to destabilize the society and the State as a whole through such activities. The object and ‘*mens rea*’ behind such activities is clearly spelled out from the nature of the crime committed, which must be attended to by the Courts with a deep judicial thought, as in the latter category the sole object / purpose in committing different crimes is to cause alarm, dread , fright inducing sense of insecurity in the mind of the people.

14. ..

There is another category of offences, which are squarely mentioned in the substantive provision of section 7 read with section 6 of the Special Act, which are specifically described to be acts of terrorism and shall fall within that definition however, the qualifying words, attached thereto, create a subtle distinction between the ordinary crimes, committed out of personal revenge, enmity or private motive and those committed for the object of creating terror. This aspect needs to be interpreted and construed in a meaningful and objective manner so that the two categories of crimes i.e ordinary crimes and those related to terrorism, are neither mixed up nor intermingled because construction

placed on it at random without judicial thoughts, the cardinal principle relating to constructions of Statute, would be defeated and ordinary crimes having no nexus with terrorism or terrorist activities would be incorrectly or wrongly placed in the grey category of crimes, which is not the object and intent of the Legislature. **If ordinary crimes committed due to personal revenge or motive are given the colour of terrorism or terrorist activities, hundreds and hundreds of Criminal Courts (Sessions Courts) and other Courts would be rendered inoperative and their vested jurisdiction would be taken away for no justifiable reason.** The Prosecution and disgruntled complainants have been noticed making crude attempts to paint an ordinary crime as an act of terrorism so that the rival / opposite party is put to maximum mental agony. **Here, it becomes the duty of the Court of law to draw a fine distinction between two kinds of crimes, which are definitely pole apart.**

15. .... What were the reasons and background, which influenced the mind of the Legislature in enacting special law of this nature, one has to look upon the history of events, which had occurred preceding the enactment of the law by the Legislature because that is of much help to the Court of law to reach at a proper and fair conclusion.

23. ..  
..

Not only the preamble to the Special Act but majority of the substantive provisions are clearly directed to deal with terrorists , terrorist activities and terrorist organizations. After carefully study of the entire scheme of the Special Act, with a deep thought , the only legitimate conclusion thus would be that barring specified crimes, **the conventional or customary crimes like murder, attempted murder, causing hurt and theft etc, are not included in the scheme of the Special Act.** In the same way, offences of murder, causing bodily harm or hurt with whatever weapon in places other than those mentioned in the Schedule where, element of terrorism is not perceivable from the facts of a particular case, the same shall not come within the mischief of terrorism or terrorist activities.

24. True, that in section 6 read with section 7 of the Special Act, offences of murder, attempted murder or causing bodily hurt or injury have been made cognizable by the Special Court, however, from the qualifying words, preceding the description of offences under subsection (1) of section 6 read with the provisions of section 7 the intention of the Legislature becomes perceivable / visible that in committing these crimes essentially the element of "terrorism" shall be persuasive factor however other category of crimes duly specified and listed in Special Act shall fall within the ambit of provision of same being act of terrorism in that regard. The manifest intent of the Legislature does not leave behind any doubt for debate.

25. In certain circumstances, offences of murder or bodily harm, committed by the individuals in a sudden fight, even at public places, due to sudden flare up where the reason

preceding such fight is concealed by both the parties, shall also not fall within the definition of terrorism because the object to be achieved is not terrorism or to carry out terrorist activities, ...

26. The famous jurists on construction and interpretation of Statute are almost in agreement that **whenever Penal Statute requires interpretation then, it shall be so interpreted, which favours the accused person and not the State.** Reference may be made in this regard to the ..

27. ... Although, incidentally, in ordinary crimes sometimes the damage caused to human life might be devastating, gruesome and heart sickening, however, this by itself would be not sufficient reason to bring the crime within the fold of terrorism or to attract the provision of section 6 or section 7 of the Special Act, unless the object intended to be achieved was falling within the category of crimes, clearly perceivable to create terror in people or / and sense of insecurity.

The case of *Waris Alil* supra *prima facie* puts a seal to the legal position that the conventional or customary crimes like murder, attempted murder, causing hurt and theft etc, regardless of *nature* of weapons, used; damage caused to human life in devastating, gruesome and heart sickening manner, would not fall within jurisdiction of Courts, constituted under Anti-Terrorism Law if persuasive factor of creating *terrorism* is *prima facie* not perceivable rather same appears to be in consequence of personal revenge or motive.

10. The *motive* in the instant case was concluded by the trial Court to have been *personal vendetta* and essential element of creating terrorism in public was never established nor attempted therefore, instant case *prima facie* falls in those category which, per *Waris Ali* case, not liable to be tried by Special Court. Since, in the said case of *Waris Ali* it is also held as:-

“29. ..

*The phrase used “to be treated in accordance with law” includes that every citizen must be dealt with according to law applicable to him, subject, of*

*course, to the facts and circumstances of the case. If any citizen is triable under the ordinary penal law of the land, then, treating him harshly under special law, not clearly applicable to him would be a violation of the command of the Constitution.*

Thus, in consequence to above discussion as well guidance, provided by case of Waris Ali, we find that this was a case of personal vendetta, hence, Section 6 of Anti-Terrorism Act was misapplied by the police as well cognizance and trial was not proper. Accordingly, impugned judgment is set-aside and case is remanded back to the ordinary Court (Sessions Court) for *denovo* trial. Trial Court would be competent to decide the compromise application within the four corners of law; as well any other application if filed before the trial Court.

11. Accordingly, Spl. Criminal ATA No. 19 of 2013, Spl. Cr. ATA No. 24 of 2013 & Special Criminal ATA No.25 of 2013 are disposed of in the above terms and Criminal Revision Application No. 40 of 2014 is dismissed as not pressed and trial Court would be competent to examine the case as fresh and the same shall be decided in accordance with law. Accordingly, Confirmation Case No. 01 of 2013 is answered as negative.

Office to place this order in connected matters.

**JUDGE**

**JUDGE**