

Cr. Rev. Application No.155 of 2017

Order with signature of Judge

Mr.Justice Yousuf Ali Sayeed

Versus

Date of hearing:17.09.2018

Mr. Muntazir Mehdi, D.P.G.

Muhammad Ali Mazhar, J: This Criminal Revision Application has been brought to challenge an order dated 19.09.2017 passed by learned Anti-Terrorism Court No.II, Karachi in Special Case No.91/2014 (***The State vs. Sikandar Lashari and others***) whereby the application moved under Section 23 of Anti-Terrorism Act 1997 for the transfer of the aforesaid case from Anti-Terrorism Court to an ordinary court was dismissed. According to the applicant's own opinion and frame of mind, no case of terrorism is made out by the prosecution hence the case does not merit to be

tried under the provisions of Anti-Terrorism Act, 1997. In paragraph 20, the learned Anti-Terrorism Court held as under:

“20. To sum up, though enmity has no connection with the ATA but the Court has to be dynamic and should consider the surrounding situation lead to the murder. It was not a simple case of murder of enmity. It was preplanned murder by hiring criminals which had not only moved the Hon’ble Supreme Court but also Hon’ble Sindh High Court. There were strikes in different cities of interior Sindh. Naudero was completely closed. The Courts were closed. The lawyers were on strikes. This murder had nexus with the provisions of ATA as society at large were affected. Even if it was an honour killing it had effect on the society and a public at large therefore I am of the opinion that the jurisdiction lies with the ATA, as such I reject the application.”

2. At an earlier time also, similar application was moved by the applicant which was also dismissed and the order of trial court was challenged in this court vide Criminal Revision Application No.96/2015 but the revision application was dismissed. According to the learned counsel for the applicant at that time entire evidence was not recorded. The Division Bench of this court in the earlier revision application held in the concluding paragraph as under:

“Thus, the manner of commission of offence; known consequence of offence; status of targeted person as the son of a sitting Sessions Judge as well as student of law and above all the alleged author of these all is a Sessions Judge who is believed to be well aware of law; consequences of an action and impacts thereof, if are viewed with settled generalized principles for determining the jurisdiction of a Criminal Court, make us of the clear view that the learned ATA Court committed no illegality while dismissing the application of the accused persons, moved under Section 23 of the Act and order, impugned, is well reasoned which is maintained. In consequence whereof the instant revision petition was dismissed vide short order dated 17.05.2017; these are the reasons for the same.”

3. Being dissatisfied with the order passed by the learned Division Bench of this court, the applicant had also filed Criminal Petition No.822/2017 in the Supreme Court of Pakistan which was disposed of on 02.08.2017 with the following observations:

“4. A look at the impugned order reveals that it was passed at the time when no evidence was recorded. The data then available may have spelt out a case triable by the Anti Terrorism Court but what does the evidence on the record spell out is yet to be seen. Learned ASC contended that the evidence which has so far been recorded does not show it to be a case falling within the ambit of Section 6(1)(b) of ATA. The contention may have some substance but this Court at this stage cannot give any opinion without deeper appraisal of the evidence. Section 23 of the ATA caters for a situation of this type. The court which has recorded evidence can at any stage transfer the case for trial to a court of competent jurisdiction according to the nature of the case. We thus, do not feel persuaded to interfere with the impugned orders. However, if the trial Court on appraising the evidence comes to the conclusion that it is not a case triable under the ATA, it would be at liberty to send it to the Court of ordinary jurisdiction without being influenced by any of the observations made in the impugned orders. The petitioner would thus be at liberty to move an application in this behalf if in his view the evidence recorded shows that it is not a case triable by Anti-Terrorism Court.”

4. In fact, on the strength of above observations made by the apex court, the applicant again moved application under Section 23 of the Anti Terrorism Act 1997 which was dismissed and the order is challenged through instant criminal revision application. During course of arguments, the learned counsel for the applicant, complainant and the learned D.P.G. all have confirmed in one voice that in the trial court proceedings have been concluded and the judgment has been reserved in the **Special Case No.91/2014 (The State vs. Sikandar Lashari and others)**. The counsel for the complainant and DPG further added that the counsel for the applicant also agitated the question of jurisdiction in the trial court. Since the trial

court has already heard the case and judgment is reserved so the learned counsel for the applicant after arguing at some length agreed that this revision application may be disposed of with the observations that if the conviction is recorded, the applicant shall be allowed to raise the question of jurisdiction in the appeal with all other available grounds. On this proposal, the learned counsel for the complainant as well as the learned D.P.G. both have no objection. The criminal revision application is disposed of accordingly.

Judge

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