

(1)

Cr. No. 24/17

CH
2/11

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.

Cr.Misc.Application.No. D-1048 of 2017

01. Majid @ Dodo S/o Nawaz Ali
 02. Mujeeb @ Kharo S/o Murad Ali
 03. Munsif @ Danoo S/o Aijaz Ali
 04. Azhar Ali S/o Jawad
Muslims adult all Mirani by caste
R/o village Bachal Shah Miani Sukkur
At present confined in Central-Prison Sukkur
- Applicants.

VERSUS

1. The State
 2. Deedar Ali Mirani S/o Sachy Dino,
Mirani by caste R/o Bachal Shah Miani,
Sukkur
- Respondent

Crime No.24/2017.
U/S 302, 324, 148, 149, 114, 337-II(I), PPC
7ATA 1997.
Police Station Airport

APPLICATION UNDER SECTION 561-A Cr.P.C.



1

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Misc. A. No. D-1048 of 2017

Date Order with signature of Judge

For katcha peshi

Present:

Mr. Justice Abdul Rasool Memon J,
Mr. Irshad Ali Shah J,

Date of hearing 11.04.2018

Date of order 10.05.2018

Mr. Amanullah Malik Advocate for applicant
M/s Muhammad Farooq Jatoi & Abdul Hafeez Mirani
Advocates for complainant / respondents
Mr. Sardar Ali Shah Rizvi DPG

IRSHAD ALI SHAH J. The applicants by way of instant application u/s 561-A Cr.PC has impugned an order dated 23.10.2017 of learned Judge Anti-Terrorism Court, Sukkur, whereby their application u/s 23 of ATA Act 1997 for transfer of their case to court of ordinary jurisdiction was dismissed.

2. It is alleged in the FIR that the applicants and other were running gambling and narcotic dens in their neighbourhood, it was objected by the complainant party, which annoyed the applicants and others and they then on 1.7.2017 at about 9.00 pm time, after having formed an unlawful assembly and in prosecution of their common object, committed death of Rashid Ali by causing him fire shot injuries by butt blows and then went away by making aerial firing to create harassment and terrorism, for that the present case was registered against the applicants and others at the instance of the complainant party and they after due investigation were challaned to face trial for the above said offence, before learned Anti-Terrorism Court, Sukkur,



3. The applicants by way of an application u/s 23 of the ATA Act 1997, sought for return of their case to the Court of Ordinary jurisdiction. It was dismissed by learned Judge ATA Court Sukkur, by way of order dated 23.10.2017 which the applicants have impugned before this court by way of instant Cr. Misc. Application u/s 561-A Cr.PC as stated above.

4. It is contended by learned counsel for the applicants that the complainant and the applicants being neighbourer were already disputed with each other. By contending so, an impression was given by him that the provisions of Anti-Terrorism Act 1997 were not applicable to the facts and circumstances of the present case. The case of the applicants according to him not to have been tried by ATA Court Sukkur and learned ATA Judge Sukkur by dismissing the application of the applicants for transfer of their case to the Court of Ordinary jurisdiction has committed wrong, which according to him could be made right by this court by way of instant Cr. Misc. Application u/s 561-A Cr.PC. In support of his contentions he relied upon case of **Province of Punjab vs. Muhammad Muqem and others** which is reported at **PLD 2018 SC 178**, 2. **Case of Waris Ali and others vs. The State** which is reported at **2017 SCMR 1572**, 3. **Fazal Dad vs. Colonel (Rtd) Ghulam Muhammad Malik and others** which is reported at **PLD 2007 SC 571**, 4. **Case of Bashir Ahmed vs. Muhammad Siddiq and others** which is reported at **PLD 2009 SC 11**, 5. **Case of Umar Farooq and others vs. Judge Anti-Terrorism Court Mirpur Khas and others** which is reported at **2014 P.Cr. L J 1052** and 6. **Case of Hazoor Bux and another vs. The State and another** which is reported at **PLD 2012 Sindh-469**.



^

5. Learned counsel for the private respondent by supporting the impugned order of learned Judge ATA Court Sukkur, has sought for dismissal for the instant application by contending that the applicants and others have committed an act of terrorism by creating insecurity amongst the people of the neighbourhood by committing death of deceased in a brutal manner. In support of his contentions he relied upon case of Mst. Raheela Nasreen vs. The State and another which is reported at 2002 SCMR 908, 2 Case of Mirza Shaukat Balg and others vs. Shahid Jamil and others which is reported at PLD 2005 SC 530, 3. Case of Zahid Imran and others vs. The State and others which is reported at PLO 2006 SC 109, 4. Case of Muhammad Mushtaq vs. Muhammad Ashiq and others which is reported at PLO 2002 SC 841, 5. Case of Kashif Ali vs. The Judge, Anti-Terrorism Court No.11 Lahore and others which is reported at PLD 2016 SC 951, 6. Case of Shahbaz Khan alias Tippu and others vs. Special Judge Anti-Terrorism Court No.3, Lahore and others which is reported at PLO 2016 SC 1, 7. Case of Nazeer Ahmed and others vs. Nooruddin and another which is reported at 2012 SCMR 517, 8. Case of Muhammad Saijad and others vs. Rab Nawaz and 3 others which is reported at 2013 MLD 1599, 9. Case of Nooruddin vs. Nazeer Ahmed and 4 others which is reported at 2011 P.Cr. L J 1370, 10. Case of Muhammad Irian Tufail vs. inspector General of Police Punjab Lahore and 5 others which is reported at 2011 P.Cr.LJ 1384, 11. Case of Abdul Aziz vs. Muhammad Punhal and 2 others which is reported at 2017 MLD 1321, 12. Case of Bibi Zawar vs. Sessions Judge Quetta and 2 others which is reported at 2017 P.Cr, L J 1371 and 13. Case of Tanveer Hussain vs. The State and another which is reported at 2018 P.Cr. L J Note 21.



6. Learned DPG has not supported the impugned order.
7. We have considered the above arguments and perused the record.
8. It would be useful to reproduce section 6 of the Anti-Terrorism Act of 1997, which reads as under:

"6. Terrorism. — (1) In this Act, terrorism" means the use or threat of action where:-

- (a) The action falls within the meaning of _____
- (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).....

(2) An "action" shall fall within the meaning of subsection (1), if it:-

- (a) involves the doing of anything that causes death;
- (b) Involves grievous damage to property including government premises, official installations, school, hospitals, offices or any other public or private property including damaging property by ransacking, looting or arson or by any other means;
- (c) Involves the doing of anything that is likely to cause death or endangers a person's life;

9. In order to determine, whether an offence falls within the ambit of Section 6 of the Act or otherwise, it was observed by Hon'ble Supreme Court of Pakistan, in case of **Kashif Ali** (supra) that;

"it would be essential to have a glance over the allegations leveled in the FIR, 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 term "design" which has given a wider scope to the jurisdiction of the Anti-terrorism Court excludes the intent or motive of the accused. In other words, the motive and intent have lost their relevance in a case under Section 6(2) of the Act. What is essential to attract the mischief of this Section **is the object for which the act is designed.**"

From above, it is clear that in determining the application of Section 6 of the Act, the claimed *motive* was / is not of much importance but it would be the **design** (manner) which the *culprit* chooses to achieve object. In other words, if an offence is designed in such a manner that ultimate effect thereof would result in striking



5

general public or those intending to do a lawful act which the targeted person or persons did then such offence would squarely fall within mischief of Section 6(2) of the Act., it was further detailed in the case of *Kashif Ali (supra)* that:-

"The contention of the learned Counsel for Respondent No.2 that the incident was a result of personal enmity would not exclude the case of the accused-Respondents from the mischief of section 6(2) of the Act. The manner in which the incident had taken place and the time of occurrence should be taken note of, the effect of **which** was to strike terror in the supporters / voters and general public, therefore, the offence squarely falls within the contemplation of section 6 (*ibid*)."

11. In FIR of the present case, it is clearly mentioned that the complainant party was having an objection against the applicant and others for running narcotic and gambling dens in their neighborhood. The applicant and others in order to satisfy their ego and to maintain the so called supremacy in their neighbourhood, after having formed an unlawful assembly and in prosecution of their common object being armed with deadly weapons, committed murder of deceased Rashid Ali by causing him fire shot injuries and butt blows. It was not an act of sudden reaction but a premeditated and preplanned act on the part of applicants and others. The manner in which the applicant and others have acted *prima facie* was not to settle some personal score but seems to leave a message to people of neighborhood, thereby conveying them lethal consequences in objecting / questioning their wrongful and / or unlawful act. Such object, *prima facie* is appearing from date, time and place the applicants and others have chosen for committing the offence, which obviously created a sense of insecurity amongst the people of neighborhood and/or society. As such the act on the part of applicants and others obviously was falling within ambit of Section 6 of the Anti Terrorism Act 1997. In these circumstances learned Judge ATA Sukkur was right to dismiss application u/s 23 of ATA Act of the applicants for



transfer of their case from his court to court of ordinary jurisdiction for its trial.

12. The case law which is relied upon by learned counsel for the applicants is on distinguishable facts and circumstances. In case of **Province of Punjab** (supra) there was dispute between the parties over the plot and incident occurred at the time of inspection of plot by the local commissioner. In the instant matter, there is no dispute between the parties over plot. In case of **Waris Ali and others** (supra) parties were having a blood feud since long and object to be achieved was to take revenge for the previous enmity. In the instant matter, there is no blood feud between the parties. In case of **Fazal Dad** (supra) parties were disputed over possession of landed property. In the instant matter, there is no dispute between the parties over possession of landed property. In case of **Bashir** (supra) there was previous enmity between the parties. In the instant case there is no previous enmity between the parties. In case of **Umar Farooq** (supra) there arose dispute between the workers of two rival political parties over installation of their party flags. In the instant case there is no political dispute between applicants and complainant party on installation of their party flags. In case of **Hazoor Bux** (supra) simple case of intended theft led to murder of two persons. In the instant case no theft was intended but the deceased was done to death by the applicants and others by resorting to indiscriminate violence, only for the reason that the complainant party was having objection for running narcotic and gambling dens by the applicants and others in neighborhood.

13. Based on above discussion, it can be concluded safely that the impugned order of learned Judge ATA Court Sukkur is not calling



for interference by this Court, by way of instant Cr. Misc. Application
u/s 561-A Cr. PC. It is dismissed accordingly.

CERTIFIED TO BE TRUE COPY

Sd/-10/5
IRSHAD ALI SHAH,
JUDGE.

TYPED BY 

COMPARED BY

27/9

Sd/-
ABDUL RASOOL MEMON,
JUDGE.

