

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Spl. Cr. ATA No. 103 of 2020

Present:-

Yousuf Ali Sayeed &
Adnan Iqbal Chaudhry, JJ

Appellant : Muhammad Assad Qureshi, through
Saathi M. Ishaque Advocate.

Respondent : The State through Zafar Ahmed
Khan, APG

Date of hearing : 22.06.2021

JUDGMENT

YOUSUF ALI SAYEED, J. The Appellant was ostensibly arrested at 1530 hours on 29.04.2020 from a public street in the vicinity of Qubba Masjid, situated at Bandhani Colony, Liaquatabad, Karachi, by a police party of the Counter-Terrorism Department (“**CTD**”) Karachi, led by ASI Tanveer Hussain (the “**Complainant**”), with his physical search shown to have yielded 2 funding books, each consisting of 100 leaves, one in the denomination of Rs.100 and the other of Rs.500, upon which the words “Sepah-e-Sahaba Pakistan” were printed. It is said that 10 receipts of Rs. 100 each had been issued from one book and 5 receipts issued of Rs.500 from the other, with a sum of Rs.3500/- allegedly representing the funds so raised also being recovered, along with a mobile phone, a further cash amount of Rs.450/-, the Appellants original CNIC and his learners driving license. The First Information Report, bearing No. 61 of 2020 (the “**FIR**”), was then registered in the matter by the Complainant at P.S. CTD, Karachi, at 1645 hours on the same day under Sections 11-H and 11-N of the Anti-Terrorism Act, 1997 (the “**ATA**”).

2. As per the FIR, the Complainant had been on patrol with his subordinate staff that day in official mobile No.SPB-822 to search out proclaimed offenders/target killers of militant religious groups, when he received tip from a confidential informant that one such person associated with the banned organisation Sepah-e-Sahaba would be found at the aforementioned scene of incident, and upon their reaching that location the Appellant was pointed out by the informant, whereafter he was apprehended and searched, with the police personnel only witnesses being due to non-cooperation of private witnesses.

3. Following the usual investigation, the matter was challaned and sent up to the Court of the Judge Anti-Terrorism No. XII, Karachi (the "**Trial Court**"), where in the ensuing Special Case, bearing No. 111 of 2020, a convoluted charge came to be framed against him as to his being a member of a banned/proscribed organisation and engaged in raising fund for its purposes, with it being asserted that he had himself disclosed/admitted that he had provided such funds to his Head/Ameer, Ahmed Bhai of Liaquatabad, and that he had been so engaged on the day that he had been arrested, to all of which he pleaded not guilty and claimed trial.

4. Of the several officials said to have comprised the police party on the fateful day, the Prosecution examined only the Complainant (PW-1), who *inter alia* produced certain Roznamcha Entries, the Memo of Arrest and Recovery, the FIR, and the Memo of Site Inspection and FIR No.35/2020; PW-02, HC Kamran Yaqoob at Ex. 06, who produced various document, including the CDR record; PW-03, DSP Muhammad Khalid, and PW 04, Inspector Ali Hyder, the Investigating Officer, who also produced various other Roznamcha entries along with a letter to DSP Investigation to obtain the NADRA and CDR record, as well as a list of banned/proscribed organizations.

5. The Statement of the Appellant under Section 342 Cr.PC was recorded at Ex.11, wherein he professed innocence and denied the allegations *in toto*, stating that he had been picked up on 24.04.2020 at about 0130 hours by four plain clothes police officials from the street corner of his house and kept under detention until falsely implicated through the FIR. He produced certain Annexures in the form of complaints made by his brother in that regard to various police functionaries as well a newspaper story covering the matter, but did not opt to take the stand or otherwise lead any evidence in his defence.

6. Based on the depositions of the prosecution witnesses and the evidence produced by them, the Trial Court arrived at the conclusion that the charge had been successfully proven against the Appellant, with a finding of guilt accordingly being recorded against him in terms of the judgment rendered in the aforementioned Special Case on 27.07.2020 (the "**Impugned Judgment**"). As such, he was thereby sentenced to undergo (i) Rigorous Imprisonment ("**RI**") for 6 months along with fine of Rs.10,000/-, and in case of failure to pay to suffer Simple Imprisonment ("**SI**") of 4 months more under S.11-F(1) of the ATA, (ii) RI for 3 years along with fine Rs. 10,000/-, and in case of failure to pay to suffer SI of 4 months more under S.11-F(5), and (iii) RI for ten years along with fine of Rs.50,000/-, and in case of failure to pay to suffer SI of 06 months more u/s 11-H (1) (2)

7. Learned counsel for the Appellant assailed the Impugned Judgment, contending that the so-called facts narrated in the FIR were a fabrication, designed to falsely implicate the Appellant, and that the evidence produced by the prosecution was so marred with gaps as to leave no scope for the Trial Court to have recorded a conviction.

8. Conversely, the learned APG defended the Impugned Judgment, arguing that the recovery of the receipt books from the Appellant at the time of his arrest coupled with his admitted link to Ahmed Bhai, a known functionary of the Sepah-e-Sahaba Pakistan, which was a proscribed organisation, served to conclusively prove his guilt under S.11-H of the ATA.

9. Having considered the matter in light of the record, it merits consideration that S.11-H of the ATA *inter alia* stipulates as follows:

“11H. Fund Raising. - (1) A person commits an offence if he:-

(a) invites another to provide money or other property; and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purpose of terrorism [or by a terrorist or organization concerned in terrorism.]

(2) A person commits an offence if:-

(a) he receives money or other property; and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism [or by a terrorist or organization concerned in terrorism].

(3) A person commits an offence if he:-

(a) provides money or other property; and

(b) knows or has reasonable cause to suspect that it will or may be used for the purpose of terrorism [or by a terrorist or organization concerned in terrorism].

10. What is discernible from a plain reading of the provisions is that while the same attaches criminal liability to the provider, recipient and intermediary of money or property, it is apparent that the *actus reus*, as envisaged under its 3 sub-sections, necessarily entails a transactional link, which in the case of an intermediary, as under sub-section (1), would be between him and the person invited to provide money or property, whereas in the cases falling under sub-sections (2) and (3), would be between the provider and recipient. The *mens rea* in any event is that of knowledge or

reasonable cause to suspect that the money or property invited, received or provided, as the case may be, would be used for 'terrorism' or by a 'terrorist' or organization concerned in terrorism. For such purpose, the term "terrorist" stands defined as per Section 2(y) of the ATA to have the meaning assigned to it in S. 6(5), which in turn stipulates that it includes any act done for the benefit of a proscribed organization.

11. Be that as it may, what immediately strikes a chord as a point of concern in the matter at hand is that the Complainant conceded under cross-examination that a Covid-19 related lockdown was in place all over Pakistan on 29.04.2020 and no one was therefore allowed to offer prayers at the Mosque that day, with all shops also being closed. This begs the question as to what purpose would conceivably have been served by the Appellant being present at the place of incident on the given day, as the environment was hardly conducive for the purpose of fund raising under such circumstances. Furthermore, and more fundamentally, albeit the Memo of Arrest reflecting that several private persons were present at the time of the Appellant's arrest, no such person was associated with the investigation who could say that the Appellant was collecting money in the name of the proscribed organization, nor was any person from the vicinity who gave any money to the Appellant for such purpose brought forward to support the prosecution's case. Whilst this aspect was glossed over with the observation that the private persons had refused to act as witnesses, the record is silent as to the names of any persons who were called upon and refused and there is no mention of any notice even having been issued in that regard under S.160 Cr.P.C. Indeed, even as portrayed, the circumstances surrounding the Appellant's arrest do not conform to a scenario where he was caught *in flagrante delicto* collecting funds from a specified person or conveying the same to a named terrorist, but gravitate around the assertion that such element of the offence was established through the Appellant's admission

as to his nexus with one Ahmed Bhai. However, when this aspect is examined, it transpires that no evidentially admissible admission was recorded in the matter, with it having been conceded by the Complainant (PW-1) and the Investigation Officer of the case (PW-4) that the statement of the Appellant under Section 164 Cr.P.C had not been recorded before any Court of law. Even PC Athar Rizvi, one of the members of the police party, was not produced as a witness despite it being stated by the Complainant and HC Kamran Dogar (PW-2) during their depositions that he had been instrumental in the arrest and despite the fact that he was also one of the Mushirs. In fact, the Memo of Arrest does not specifically show who apprehended the Appellant, but generally mentions that the Complainant (PW-1) “apprehended him alongwith help of accompanying officials.” No specific mention of the role of HC Kamran Dogar (PW-2) or PC Athar Rizvi was made therein, which was only brought to the fore subsequently, through the testimony of those two witnesses.

12. What also merits consideration in this backdrop is the plea taken by the Appellant through his S.342 Statement, as earlier asserted through his counsel during the cross-examination of the Complainant and HC Yaqoob, with it being averred/suggested that the Appellant had been picked up from the vicinity of his place of residence on an earlier date (i.e. 24.04.2020) and kept in undisclosed confinement until his arrest came to be shown on 29.04.2020 in the case underpinning the FIR. What lends credence to this plea are the complaints lodged by the brother of the Appellant prior to the FIR and the fact that the CDR data produced by the prosecution for the period 22.04.2020 to 29.04.2021 did not reflect any activity on the 25th, 26th, 27th and 28th of April 2020, which, per learned counsel, demonstrated that the Appellant was under confinement over those dates.

13. As such, a pall of doubt is cast over the arrest of the Appellant, as shown, and it is apparent that the prosecution even otherwise failed to establish that the money allegedly recovered from him was to be made available to a proscribed organisation or otherwise used for terrorism. As such the ingredients of S.11-H were not proven. Even the Notification declaring the Sepah-e-Sahaba Pakistan as a proscribed organization was not produced, and only a list of such organizations was placed on record, which itself bore a Note to the effect that the same was not a legal document and could not be presented in any Court of law.

14. It is for these reasons that we had determined upon culmination of the hearing on 22.06.2021 that the Impugned Judgment could not sustain, hence had made a short Order in open Court whereby the Appeal was allowed, with the Appellant being acquitted of the charge and the conviction and sentence awarded to him being set aside.

JUDGE

Karachi
Dated _____

JUDGE