

ORDER SHEET**IN THE HIGH COURT OF SINDH AT KARACHI****Present:-****Mr. Justice Muhammad Iqbal Kalhoro****Const. Petition No.623 of 2020**

Haji Muhammad Siddique

Versus

The Province of Sindh & others

Const. Petition No.1272 of 2020

Mst. Salma @ Ume-Salma

Versus

The Province of Sindh & others

Date of hearings : 17.08.2021 & 20.08.2021.**Date of order : 27.08.2021.**

M/s. Mehmood-ul-Hassan and Mushtaq Ali Tagar, advocate for the petitioners

M/s. Zamir Hussain Ghumro & Waseem Iqbal, advocates for respondent No.4

Mr. Khadim Hussain Khooharo, Additional Prosecutor General, Sindh

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ORDER

MUHAMMAD IQBAL KALHORO J: Petitioners, standing a trial in Special Case No.04/2020 in the Anti-Terrorism Court Naushehro Feroze against the charge, among others, u/s 302 PPC for allegedly murdering Mst. Shahnaz Ansari, a Member Provincial Assembly, filed applications u/s 23 Anti-Terrorism Act, 1997 there for transfer of the case to the Court of Sessions, dismissed vide an order dated 16.06.2020, called on this court through petitions in hand for setting aside the said order and transferring the case to the court of ordinary jurisdiction.

2. These petitions came up for hearing before an Honorable Division Bench of this court comprising my lords Mr. Justice Nazar Akbar and Mr. Justice Muhammad Faisal Kamal Alam, sitting at Sukkur, who could not acquiesce in each other's point of view on the issue and gave split

decision on 05.05.2021. My lord Mr. Justice Nazar Akbar allowed the applications u/s 23 ATA, 1997, set aside the impugned order and transferred the case from the Anti-Terrorism Court to the Sessions Judge, Naushehro Feroz. While, my brother Mr. Justice Muhammad Faisal Kamal Alam decided inversely and dismissed the petitions. Hence, the file was placed before the Honorable Chief Justice for appointing a Referee Judge and he was pleased to nominate the undersigned vide an administrative order on office note dated 24.05.2021.

3. In pursuance, the parties appeared and presented their respective case at length mostly clinging to the line taken by them earlier before the division bench of this court. Learned counsel for petitioners in addition to relying upon a number of cases including the case of **Ghulam Hussain and others Vs. The State and others** reported in **PLD 2020 SC 61** and definition of terrorism articulated therein stated the alleged offence is an outcome of personal enmity between the parties; the accused and the victim party including the deceased are relatives inter se; and therefore the provisions of ATA, 1997 are not attracted in the case. Learned Addl. PG. Sindh too reinforced this stance of learned defense counsel in his arguments. However, learned counsel for the complainant feverishly contested such view and said that the deceased was a sitting MPA and a member of Provincial Public Safety and Police Complaints Commission Sindh appointed vide a notification dated 11.09.2019, had no personal enmity with the accused, was made target on account of her official position, her murder was designed to create terror in the community so as to destabilize the entire family of her widow sister Mst. Shabana and restrain her from acquiring rights accrued to her in the wake of death of her husband Zahid Hussain. The fear and insecurity, it caused in the local community and general public, was not a byproduct of the crime but it was premeditated in advance. Therefore the alleged offence falls within the ambit of definition of terrorism defined by the Honorable Supreme Court in various judgments time and again. He also relied upon the case of **Ghulam Hussain and others** (*supra*) to sustain his case.

4. Before starting discussion on the issue and recording my point of view, it is convenient to reproduce facts in brief to highlight horizon rising behind this controversy. One Ali Raza, a brother of deceased MPA Mst. Shahnaz Ansari, reported to relevant Police Station the incident of her death at the hands of petitioners and other accused, inside house of his another sister Mst. Shabana where they all had gathered to observe (Chehlum) 40th day of death of her husband. It is alleged that the accused killed the deceased because she was backing Mst. Shabana in

ironing out her issues over property etc., left by her husband, with the accused party, a brother of her deceased husband, his son, and other family members, which they disliked and had already warned her against. This occurrence, the police concluded, was a result of an act of terrorism, as such, not only in FIR but after investigation in the report u/s 173 CrPC, the relevant provisions of ATA, 1997 were incorporated and the Challan was submitted in the court of Anti-terrorism court. That was when the petitioners decided to question wisdom of the police to apply provisions of special law and filed applications u/s 23 ATA, 1997 before the Anti-terrorism court for transfer of the case to the court of ordinary jurisdiction. But when they did not succeed filed these petitions and met with split decision on the issue as stated above.

5. It is in this backdrop I have been called upon to express my view conditioned to either of the opinion conveyed by their lordships in their respective decisions in order to set the point in hand at rest. In our humble view that the ratio laid down by the Honorable Supreme Court in the case of **Ghulam Hussain** (*supra*) that it has reiterated in the case of **Ali Gohar and others Vs. Pervez Ahmed and others (PLD 2020 SC 427)** has finally settled controversy associated with definition of terrorism. In reference to section 6 of ATA, 1997, it has eloquently elaborated as to what action or threat of action constitutes terrorism. In paragraph 10 and 11 of the judgment has recalled all the precedent cases available on both sides of divide delineating constituents of terrorism. In the end, after an erudite discussion in paragraph 13, 14 and 15, while examining, *inter alia*, preamble to ATA, 1997 and jurisdiction of Anti-Terrorism Court under section 12 of said Act coupled with definition of scheduled offences in relation to the Third Schedule to said Act, has declared in paragraphs 16 of the judgment as under:-

16. For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act. It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta.

This judgment explicates in no ambiguous words that fear or insecurity actually created or intended to be created or likely to be created as a result of an action or threat of such action is no longer a determinative factor to qualify it (such action) to be termed as terrorism. It is now only the intent and motivation behind the action which is to be taken to as criteria to decide whether or not an action is terrorism, irrespective of the fact whether the fear or insecurity in the society has actually been created or not by such action. And further, an action will be dubbed as terrorism only when its 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 a sect, etc. Or if such action is designed to create a sense of fear or insecurity in the society and/or its use or threat is purposed to advance a religious, sectarian or ethnic cause. Therefore, visibly it is now only when the motive of an action or its threat itself is to create fear or insecurity in the society, and not if such factors happen to be just its byproduct, it will, regardless of consequences, fall within ambit of terrorism and would be tried accordingly. Further, while making a reference to the perception of terrorism held by other nations, the Honorable Apex Court in the said judgment has observed that internationally it is now a recognized fact that a violent activity against civilians that has no political, ideological or religious aims is just an act of criminal delinquency, a felony, or simply an act of insanity unrelated to terrorism.

6. It is obvious that emphasis to define terrorism has been shifted from a reference to an action and its repercussions in the society to the objective and motivation behind such action. An action, howsoever gruesome and shocking, and engendering fear and insecurity in the society as it may, if does not seem however to have been committed with the design or purpose to destabilize the government, disturb the society or hurt a section of society to achieve objectives in essence political, ideological or religious, will not be amenable to dispensation inculcated under ATA, 1997, and a person accused of such action would be tried under the normal law.

7. Having been guided amply by the above judgment to understand characteristics of an action to be labelled as terrorism, I am left with no doubt that alleged offence cannot be equated with terrorism. The tragedy that befell on the family, evoking as it must immeasurable shock and anguish to them and generating fear in the surroundings, was not apparently motivated by a design other than a personal one. Sorrows and insecurity follow every crime, and there is nothing benign when it comes

to perpetrate violence even against an individual. Not only the victim but his/her whole family is exposed to indelible insecurity and fear. Nevertheless, as explained above, the fear or insecurity created actually or not as a result of an offence is not a decisive factor any more to qualify it as terrorism. It is only when intent and motive of such offence is to create fear or insecurity in the society for achieving political, ideological and religious objectives, it will be labelled as terrorism. The deceased was done away with by the accused inside the house and the motive, as stated by the complainant in FIR, was to remove her from the scene so that she was not able to help her widow sister Mst. Shabana acquire or solidify her rights in the property inherited by her on account of death of husband; and interfere in the matter any further. The accused are relatives of the victim party, one is brother of deceased husband of Mst. Shabana and others are his family members. They, apparent from contents of FIR, were not seeing eye to eye with family of Zahid Hussain on the issue of property left by him and were wary of help/intervention extended by deceased MPA to Zahid Hussain's family in this respect. Their motive and purpose to kill the deceased was private namely to gain personal advantage that is unrelated to the objectives specified above and detailed in clause (b) of subsection (1) of section 6 or any of the purposes mentioned in clause (c) of subsection (1) of section 6 of ATA, 1997. No doubt the deceased was MPA but, as noted above, the design to assassinate her was to divest her widow sister and her family of her support in the face of alleged ingress by the accused in the property left by her husband, and not to destabilize the government for achieving political, etc. objectives. This situation, notwithstanding its effects and consequences, can hardly be aligned with terrorism as defined by the Honorable Apex Court.

8. In view of above discussion, I agree with the view taken by my brother Mr. Justice Nazar Akbar, set aside the impugned order, allow the applications u/s 23 ATA, 1997 and transfer the special case No.4/2020 arising out of crime No.15/2020 PS. Darya Khan Mari district Naushehro Feroze to the learned Sessions Judge Naushehro Feroze for the trial in accordance with law.

JUDGE

