

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.**

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Abdul Mobeen Lakho.

Cr. Misc. Application No. 395 of 2019

AmanullahApplicant

Versus

Muhammad Niaz Magsi & others.....Respondents

Cr. Rev. Application No.197 of 2019

Attar Khan Applicant.

Vs.

Muhammad Niaz Magsi & others.....Respondents

Date of hearing: 05.12.2019

Date of order :- 16.12.2019

M/s Zahida Majeed & Muhammad Atiq ur Rehman Advocates for Applicant Syed Lal Hussain Shah advocate has filed power on behalf of complainant in Cr. Misc. Appl. No.395/2019.
Mr. Ali Haider Saleem, DPG

ORDER

MUHAMMAD IQBAL KALHORO J: This order shall dispose of above two applications. Applicants are accused in Special Cases No.482/2019 bearing Crime No.169/2019 U/s 302,324, 34 PPC r/w section 7 ATA, and 511/2019 bearing Crime No.169/2019 U/s 23(1) of Sindh Arms Act of P.S. Peerabad pending before learned Anti-Terrorism Court No.II, Karachi and have filed these applications for transfer of the said cases from Anti-Terrorism Court to the court of ordinary jurisdiction. Previous to this, applicants filed an application u/s 23 of Anti-Terrorism Act, 1997 (ATA, 1997), before the trial court which was dismissed vide impugned order dated 12.09.2019.

2. The allegations set out in the FIR against the accused are that on the day of incident viz. 29.06.2019 at 2130 hours, they duly armed with weapons viz. pistol, dagger, axe etc. injured Waseem, who is son of the complainant and one Sajid and Ali and resorted to aerial firing in order to spread insecurity and fear in the society. Out of three injured subsequently injured Waseem and Sajid died. I.O. in his report u/s 173 Cr.P.C has described that motive behind the

incident was an accident by Trawler No.TLD-667 owned by accused Attar Khan on 29.06.2019 on road at New Mianwali Colony near main Bakery which led initially to a quarrel between boys of Baloch community and driver of the said Trawler, who called owner of the Trawler namely accused Attar Khan on phone. He alongwith his sons and other accused appeared at the spot duly armed and attacked the boys of Baloch community injuring Waseem, Sajid and Ali.

3. Learned counsel for the applicant submits that case against the applicants is not of terrorism and would not fall within the provisions of ATA, 1997 as has been decided by the Honourable Supreme Court in Cr. Appeals No.95 and 96 of 2019, Civil Appeal No.10-L of 2017 and Cr. Appeal No.63 of 2013. A copy of the judgment he has placed on record in support of his arguments.

4. On the other hand, learned counsel for complainant has opposed these applications and has submitted that Cr. Misc. Appl. No.395/2019 u/s 561-A Cr.P.C is not maintainable as against the impugned order, a revision application is competent.

5. Learned DPG while relying upon the aforesaid judgment of the Honourable Supreme Court has conceded in favour of the applicants and recorded no objection to the transfer of the cases.

6. In view of objection raised by learned counsel for the complainant over maintainability of Cr. Misc. Application No.395/2019 challenging the impugned order on the ground that same is amenable only to Criminal Revision Application, said Cr. Misc. Application is converted into Cr. Revision Application and is accordingly disposed of. Office to assign it number accordingly.

7. We have considered submissions and perused the record. In our humble view, the Honourable Supreme Court has finally set at rest controversy surrounding definition of terrorism in above cited judgment and has eloquently elaborated as to what action or threat of an action constitutes terrorism with reference to section 6 of ATA, 1997. In paragraph 10 and 11 thereof has recalled all the precedent cases available on either side of divide defining constituents of terrorism in the background of section 6 of ATA, 1997. And finally after an erudite discussion in paragraph 13, 14 and 15 examining, among others, preamble to ATA, 1997 and jurisdiction of Anti-Terrorism court

under section 12 of said Act coupled with definition of scheduled offence in relation to the Third Schedule to said Act has declared in paragraphs 16 of said 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 Criminal Appeal No. 95 of 2019, etc. 58 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.

8. We after taking guidance from the aforesaid decision of the Honourable Supreme Court and perusing facts of the case are of the firm view that the allegations against the applicants of having committed murder of two deceased and injuring one person, which is an offence u/s 302, 324, 34 PPC; and recovery of incriminating articles which is an offence u/s 23(1) of Sindh Arms Act were not an outcome of design to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of ATA, 1997 nor the same appear to be aimed at achieving any of the purposes mentioned in clause (c) of subsection (1) of section 6 of ATA, 1997 to justify invoking jurisdiction of Anti-Terrorism Court. Therefore, the applications in hand are allowed and the cases are withdrawn from the file of learned Anti-Terrorism Court No.II, Karachi and transferred to learned Sessions Judge (East), Karachi having territorial jurisdiction to either try himself or assign the same to any other court having jurisdiction for disposal according to law.

The criminal Revision Applications alongwith pending application(s) stand disposed of in above terms.

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