ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.

Present:-
Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Abdul Mobeen Lakho.

Cr. Rev. Application No. 87 of 2020

Mutahir Irfan ……………………………………Applicant

Versus

The State & others ………………………………Respondents

18.06.2020

Mr. Shahab Sarki, Advocate for applicant.
Mr. Ali Haider Saleem DPG.

O R D E R

MUHAMMAD IQBAL KALHORO J*:* Applicant is facing trial as an accused in Crime No.115/2020 U/s 354, 384, 419, 507, 509, 34 PPC r/w section 7 Anti-Terrorism Act, 1997 registered at P.S. Shahrah-e-Faisal pending before learned Anti-Terrorism Court No.XVII, Karachi and has filed this application for transfer of the said case from Anti-Terrorism Court to the court of ordinary jurisdiction. Previous to this, applicant filed an application u/s 23 of Anti-Terrorism Act, 1997 (ATA, 1997), before the trial court for the same relief which was dismissed vide impugned order dated 16.04.2020.

2. As per brief facts, complainant, who is student of MBBS final year, lodged an FIR alleging that applicant on the pretext of marriage with her recorded her licentious videos and blackmailed her into giving him gold ornaments and cash of Rs.300,000/-. She sought help of a female friend, who introduced her to her brother in law namely Khurram Anwar but he too started blackmailing her after some time and demanded Rs.100,000/-. Finally, she disclosed all the facts to her family members, who reported the matter to FIA Cybercrime Circle Gulistan-e-Johar, Karachi. During investigation, name of co-accused who were in complicity with the applicant also surfaced and they were also joined in the investigation.

3. Learned counsel for the applicant has submitted that the alleged charge does not fall within the provisions of ATA, 1997; that the Honourable Supreme Court in a case reported as PLD 2020 SC 61 has defined terrorism conclusively which exclude the offences not committed with a design to create terror and that this court while following the same principle allowed Cr. Revision Appl. No.154/2018 vide order dated 04.12.2019 withdrawing the case from the file of Anti-Terrorism Court under the same offences. A copy of the said order has been placed on record in support of his arguments.

4. On the other hand, learned DPG has opposed this application and has submitted that the alleged offence committed by the applicant falls within the provisions of ATA, 1997.

5. We have considered submissions and perused the record. In our humble view, the Honorable 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 13 & 16 of said judgment that "……**for an action or threat of an action to be accepted as terrorism within the meaning of section 6 of 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…….".** Going by that declaration it is not difficult to understand that merely creating fear or insecurity in the society by an action or by threat of such an action is not by itself terrorism unless it is seen or shown that the motive or intention or deign behind the action or threat of such action was to create fear or insecurity in the society, and that an action or its threat would not be terrorism when fear or insecurity is just an unintended consequence of a crime. We for the purpose of our guidance and deciding issue in hand are reproducing hereinunder some portions of aforesaid paragraphs:-

> **"13. ………… A careful reading of the Third Schedule shows that an Anti-terrorism Court has been conferred jurisdiction not only to try all those offences which attract the definition of terrorism provided by the Act but also some other specified cases involving heinous offences which do not fall in the said definition of terrorism. For such latter category of cases it was provided that although those offences may not constitute terrorism yet such offences may be tried by an Anti-Terrorism Court for speedy trial of such heinous offences. This distinction between cases of terrorism and cases of specified heinous offences not amounting to terrorism but triable by an Anti-Terrorism Court has already been recognized by this Court in the cases of Farooq Ahmed v State and another (PLJ 2017 SC 408), Amjad Ali and others v The State (PLD 2017 SC 661) and Muhammad Bilal v The State and others (2019 SCMR 1362). It has been clarified by this Court in those cases that such specified heinous offences are only to be tried by an Anti-Terrorism Court and that court can punish the person committing such specified heinous offences only for commission of those offences and not for committing terrorism because such offences do not constitute terrorism. For the purposes of further clarity on this issue it is explained for the benefit of all concerned that the cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-Terrorism Act, 1997 are cases of those heinous offences which do not per se constitute the offence of terrorism but such cases are to be tried by an Anti-Terrorism Court because of their inclusion in the Third Schedule. It is also clarified that in such cases of heinous offences mentioned in entry No. 4 of the said Schedule an Anti-Terrorism Court can pass a punishment for the said offence and not for committing the offence of terrorism. It may be pertinent to mention here that the offence of abduction or kidnapping for ransom under section 365-A, PPC is included in entry No. 4 of the Third Schedule and kidnapping for ransom is also one of the actions specified in section 7(e) of the Anti-Terrorism Act, 1997. Abduction or kidnapping for ransom is a heinous offence but the scheme of the Anti-Terrorism Act, 1997 shows that an ordinary case of abduction or kidnapping for ransom under section 365-A, PPC is merely triable by an Anti-Terrorism Court but if kidnapping for ransom is committed with the design or purpose mentioned in clauses (b) or (c) of subsection (1) of section 6 of the Anti-Terrorism Act, 1997 then such offence amounts to terrorism attracting section 7(e) of that Act. In the former case the convicted person is to be convicted and sentenced only for the offence under section 365-A, PPC**

whereas in the latter case the convicted person is to be convicted both for the offence under section 365-A, PPC as well as for the offence under section 7(e) of the Anti-Terrorism Act, 1997.The same may also be said about the other offences mentioned in entry No. 4 of the Third Schedule to the Act pertaining to "Use of firearms or explosives by any device, including bomb blast in a mosque, imambargah, church, temple or any other place of worship, whether or not any hurt or damage is caused thereby", "Firing or use of explosive by any device, including bomb blast in the court premises", "Hurt caused by corrosive substance or attempt to cause hurt by means of a corrosive substance" and "Unlawful possession of an explosive substance or abetment for such an offence under the Explosive Substances Act, 1908 (VI of 1908)".Such distinction between cases of terrorism and other heinous offences by itself explains and recognizes that all heinous offences, howsoever serious, grave, brutal, gruesome, macabre or shocking, do not ipso facto constitute terrorism which is a species apart. Through an amendment of the Third Schedule any heinous offence not constituting terrorism may be added to the list of offences which may be tried by an Anti-Terrorism Court and it was in this context that the Preamble to the Act had mentioned "Whereas it is expedient to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences. …………....

14. ……………Reading of subsections (1) and (2) of the said section together makes good sense, i.e. all the actions specified in subsection (2) shall constitute terrorism if they are committed with the 'design' mentioned in clause (b) of subsection (1) or are committed for the 'purpose' referred to in clause (c) of subsection (1) of that section. Subsection (3) of that section, however, provides that "The use or threat of any action falling within sub-section (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not sub-section (1)(c) is satisfied" which means that if for commission of the actions mentioned in subsection (2) a firearm, an explosive substance or any other weapon is actually used or a threat regarding use of the same is extended then all such actions are to constitute the offence of terrorism even if the other requirements of clause (c) of subsection (1) of section 6 are not satisfied or fulfilled. The requirements that need to be satisfied for invoking clause (c) of subsection (1) of section 6 are that the use or threat of action should be for "the purpose of advancing a religious, sectarian or ethnic cause" or for the purpose of "intimidating and terrorizing the public, social sectors, media persons, business community" or for the purpose of "attacking the civilians, including damaging property by ransacking, looting, arson, or by any other means, government officials, installations, security forces or law enforcement agencies". If the said requirements and purposes mentioned in clause (c) of subsection (1) of section 6 do not need to be satisfied and if mere use or threat of use of a firearm, an explosive substance or any other weapon for commission of the actions mentioned in subsection (2) of section 6 is to ipso facto constitute the offence of terrorism then every murder committed (action under clause (a) of subsection (2) of section 6), every grievous bodily injury or harm caused (action under clause (b) of subsection (2) of section 6), every grievous damage to private property (action under clause (c) of subsection (2) of section 6), doing anything that is likely to cause death or endangers a person's life (action under clause (d) of subsection (2) of section 6) or creating a serious risk to safety of the public or a section of the public (action under clause (i) of subsection (2) of section 6) even if committed with an ordinary stick, a brickbat or a stone when used as a weapon would constitute the offence of terrorism! Such trivializing of the diabolical offence of terrorism surely could not be the intention of the legislature when framing a law for the offence of terrorism which is a class apart and a species different from any other ordinary crime. ……..

15………………………The new definition of 'terrorism' introduced through the amended section 6 of the Anti-Terrorism Act, 1997 as it stands today appears to be closer to the universally understood concept of terrorism besides being easier to understand and apply. The earlier emphasis on the speculative effect of the act has now given way to a clearly defined mens rea and actus reus. The amended clause (b) of subsection (1) of section 6 now specifies the 'design' and clause (c) of subsection (1) of section 6 earmarks

> **the purpose' which should be the motivation for the act <u>and the actus reus has been clearly mentioned in subsection (2) of section 6 and now it is only when the actus reus specified in subsection (2) of section 6 is accompanied by the requisite mens rea provided for in clause (b) or clause (c) of subsection (1) of section 6 that an action can be termed as 'terrorism'.</u> Thus, it is no longer the fear or insecurity actually created or intended to be created or likely to be created which would determine whether the action qualifies to be termed as terrorism or not but it is now the intent and motivation behind the action which would be determinative of the issue irrespective of the fact whether any fear and insecurity was actually created or not. <u>After this amendment in section 6 an action can now be termed as terrorism if the use or threat of that action is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect, etc. or if such action is designed to create a sense of fear or insecurity in the society or the for the purpose of advancing a religious, sectarian or ethnic cause, etc.</u> Now creating fear or insecurity in the society is not by itself terrorism unless the motive itself is to create fear or insecurity in the society and not when fear or insecurity is just a byproduct, a fallout or an unintended consequence of a private crime. In the last definition the focus was on the action and its result whereas in the present definition the emphasis appears to be on the motivation and objective and not on the result. <u>Through this amendment the legislature seems to have finally appreciated that mere shock, horror, dread or disgust created or likely to be created in the society does not transform a private crime into terrorism but terrorism as an 'ism' is a totally different concept which denotes commission of a crime with the design or purpose of destabilizing the government, disturbing the society or hurting a section of the society with a view to achieve objectives which are essentially political, ideological or religious.</u> This approach also appears to be in harmony with the emerging international perspective and perception about terrorism. …….**
> **…………**
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> **16. For what has been discussed above it is concluded and declared that <u>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.</u> It is clarified that <u>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</u>. It is further clarified that <u>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.</u>**
> **<u>(Emphasis supplied).</u>**

6. In the above judgment, it has been conclusively decided that an action may fall within subsection (2) of section 6 of the Act but if it has been committed in furtherance of personal enmity or private vendetta, it would not qualify to be characterized as terrorism. We after taking guidance from the aforesaid decision and perusing facts of the case are of the firm view that the allegations against the applicant of having committed offence of blackmailing, receiving gold ornaments and cash and further demanding bhatta from complainant all under the pretence of marrying her, which is prima facie an offence u/s 354, 384, 419, 507, 509, 34 PPC; was 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 so as to justify invoking jurisdiction of Anti-Terrorism Court. In addition, it may be stated that during investigation even the I.O. of the case was not satisfied with the application of provisions of ATA, 1997 and after expunging the relevant sections had submitted the challan, but learned trial court vide order dated 21.02.2020 disagreed as returned the charge sheet to I.O. directing him to include provisions of ATA, 1997.

7. We for the foregoing discussion are of the view that provisions of ATA, 1997 are not attracted in the present case. Therefore, the application in hand is allowed and the case is withdrawn from the file of learned Anti-Terrorism Court No.XVII, Karachi and transferred to learned Sessions Judge (East), Karachi having territorial jurisdiction to either try the same himself or assign it to any other court having jurisdiction for disposal according to law.

The criminal Revision Application stands disposed of in above terms.

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