IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Present
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon.

Criminal Revision Application No.D-01 of 2021,

Murad alias Mann ……..Applicant

Vs.

Manzoor Ahmed another ……Respondents

Date of hearing **04.11.2021.**
Date of announcement: **18.11.2021.**

Mian Taj Muhammad Keerio advocate for the applicant.
Mr. Afzal Karim Virk, advocate for the complainant.
Mr. Shahzado Saleem Nahiyoon, Additional P.G.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- Applicant, standing trial in a Special Case No.05 of 2014 (The State versus Hafiz Irshad Ali Shah & others) being Crime No.27/2014, under Section 302, 392, 411, 34 PPC, and 6/7 of Anti-Terrorism Act, 1997, filed an application under Section 23-D Anti-Terrorism Act 1997 for transfer of case from Anti-Terrorism Court to the Court of ordinary jurisdiction on the grounds that the alleged offence does not attract sections 6/7 of ATA 1997; no specific role has been assigned to any of the accused; offence appears to be outcome of personal misgivings. Complainant resisted the application has been decided vide impugned order dated 19.12.2020.

2. Earlier also, applicant had filed application for identical relief before the trial Court, dismissed vide order dated 23.06.2018, approached this Court through rev. application No.D-19/2018,

dismissed vide order dated 16.10.2018, filed Criminal Petition No.157-K/2018 before the Honorable Supreme Court of Pakistan, which was allowed on 11.11.2020 in the terms whereby the matter was remanded back to learned trial Court for a decision afresh in the light of judgment in the case of **Ghulam Hussain and others versus The State and others (PLD 2020 Supreme Court 61)**.

3. It was in that setting applicant approached the trial court with the same request, which has been again declined by learned trial Court vide impugned order.

4. As per brief facts, when complainant came to know via electronic media i.e. television about murder of his brother Noor Alam and his family on 16.03.2014, reported the matter to police immediately and rushed to house of his brother situated in Johar Colony Mirpurkhas. There he found slaughtered bodies of his brother Noor Alam, his wife Mst. Mariyam, their daughter Baby Fatima aged bout four years, and their daughter Baby Naila aged about two years who however was alive. The FIR was registered against unknown accused but in the investigation police arrested the applicant and others.

5. Learned defence counsel has contended that the incident is un-witnessed one does not come within purview of definition of terrorism; was committed inside the house; appears to be outcome of some enmity; and as per ratio laid down by Honorable Supreme Court of Pakistan in the case of **Ghulam Hussain** (*supra*) applicants' case needs to be tried by the Court of ordinary jurisdiction.

6. On the other hand, learned counsel for complainant and learned APG for the state have opposed this application and submitted that three members of family were butchered by the applicant and other co-accused which created sense of fear and insecurity in the society in general and amongst the neighbors in particular as such the provisions of Anti-Terrorism Act are fully attracted in this case and application has rightly been rejected by learned trial Court; that not only three innocent were killed brutally but valuable articles were robbed from their house as such the offence has a ring of heinousness and such offences are exclusively triable by ATC Court.

7. We have considered the submissions of parties and perused the material available on record including the case law. In our humble view 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 the 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 benchmark 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 counted 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.

8. 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.

9. Having been guided amply by the above judgment to understand characteristics of an action to be labeled as terrorism, we are 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 and generating fear in the surroundings, was not apparently motivated by a design to commit terrorism. 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 were done away inside the house and the motive, prima facie, from a reading of report u/s 173 CrPC, besides being robbery, seems to be shrouded in a mystery. The purpose to kill the deceased 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 death of the deceased was horrific, as noted above, but the design to assassinate them was not to create terrorism or 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 in of **Ghulam Hussain** (*supra*).

10. In view of above discussion, we set aside the impugned order, allow the application u/s 23 ATA, 1997 and transfer the special case No.5/2018 arising out of crime No.27/2014 PS. Town district Mirpurkhas to the learned Sessions Judge Mirpurkhas for the trial in accordance with law.

11. The observations herein above are made exclusively in backdrop of issue in hand and shall not have any bearings on merits of the case before the trial court.

JUDGE

JUDGE

Irfan Ali