

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Revision Application No.D-35 of 2022

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Muhammad Saleem Jessar.

14.12.2022

Mr. Ishrat Ali Lohar advocate for applicants.
Mr. Shahzado Saleem Nahiyoon, APG.

ORDER

MUHAMMAD IQBAL KALHORO, J.- Applicants, standing a trial in Special Case No.16/2022 arising out of Crime No.71/2022 PS. Umerkot City pending before Anti-Terrorism Court Mirpurkhas Division @ Mirpurkhas, have filed this revision application impugning an order dated 01.11.2022, whereby their application u/s 23 of Anti-Terrorism Act, 1997, challenging jurisdiction of the Anti-Terrorism Court in the matter has been dismissed.

2. Brief facts of the case are that on the day of incident viz. 25.05.2022 SHO PS Umerkot City received information at Police Station that Pakistan Tahreek Insaf MNA Lal Chand Malhi was collecting his workers at Allah Wala Chowk and thus there was apprehension of breach of peace. He along with police party comprising police force from other Police Stations as well arrived at the pointed place and found that the said MNA was sitting inside the Press Club, and workers were gathering at the Chowk. At about 1700 hours, the said MNA came out of the Press Club and started calling the workers. SHO apprized him about a notification u/s 144 CrPC and that there was a ban over political gatherings. But the said MNA got riled up and instigated the workers. Upon

which, the workers started pelting stones to the police party with intention to commit murder. As a result, windscreens of three police mobile vehicles got smashed and SHO Ghulam Nabi Shah, Driver/PC Bhoomsingh, gunman of SDPO Abid and complainant himself received injuries, mostly, on legs. After which the police resorted to teargas and disbursed the workers. Thereafter, police took the injured to hospital for treatment and registered present FIR against known (duly named), as well as unknown workers of PTI totaling around 100/125 u/s 324, 353, 337-A(i), 337-F(i), 427, 188, 504, 147, 148 PPC and 6/7 Anti-Terrorism Act, 1997.

3. After submission of the Challan, applicants filed an application u/s 23 of Anti-Terrorism Act, 1997 for transfer of the case to the court of ordinary jurisdiction, which was dismissed, and such order was challenged before this court in Criminal Revision Application No.D-28/2022. It was disposed of vide order dated 31.08.2022 directing the trial court to examine some of the witnesses and the applicants to file such application thereafter in the light of material brought on record. It appears that after examination of few witnesses, applicants repeated application u/s 23 of Anti-Terrorism Act, 1997, which has been dismissed vide impugned order as stated above.

4. Learned counsel for applicants has relied upon the case law reported as PLD 2020 Supreme Court 61 and 2020 PCrLJ 714 to boost up his arguments that the case does not fall within jurisdiction of Anti-Terrorism Court and is triable by the court of ordinary jurisdiction. His arguments have been rebutted by learned Additional PG appearing for the State.

5. The Honourable Supreme Court in the case of **Ghulam Hussain and others versus The State and others (PLD 2020 Supreme Court 61)** has held that for an action or threat of action to be accepted as terrorism within the meanings of S.6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of S.6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in cl. (b) of subsection (1) of S.6 of Act or the use or threat of such action must be to achieve any of the purposes mentioned in cl. (c) of subsection (1) of S.6 of

the Act. Requirements that needed to be satisfied for invoking cl.(c) of subsection (1) of S.6 were 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. Clause (b) of subsection (1) of S.6 has specified the design and cl.(c) of subsection (1) of S.6 has earmarked the purpose which should be the motivation for the act and the *actus reus* had been clearly mentioned in subsection (2) of S.6. Only when the *actus reus* specified in subsection (2) of S.6 was accompanied by the requisite *mens rea* provided for in cl. (b) or cl.(c) of subsection (1) of S.6 that an action could be termed as terrorism. Thus, it was not the fear or insecurity actually created or intended to be created or likely to be created which would determine whether the action qualified to be termed as terrorism or not but it was 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. Any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, did not qualify to be termed as terrorism if it was not committed with the design or purpose specified or mentioned in cl. (b) or cl.(c) of subsection (1) of S.6 of the Act. Action could be termed as terrorism if the use or threat of that action was 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 was designed to create a sense of fear or insecurity in the society or the use or threat was made for the purpose of advancing a religious, sectarian or ethnic cause, etc. Creating fear or insecurity in the society was not by itself terrorism unless the motive itself was to create fear or insecurity in the society and not when fear or insecurity was just a by-product, fallout or an unintended consequence of a private crime. Mere shock, horror, dread or disgust created or likely to be created in the society did not transform a private crime into terrorism. Terrorism was a totally different concept which denoted 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 were essentially political, ideological or religious.

Violent activity against civilians that had no political, ideological or religious aims was just an act of criminal delinquency, a felony, or simply an act of insanity unrelated to terrorism.

6. It is an admitted position, evident from a perusal of FIR, and the evidence recorded meanwhile, that all the accused are workers of PTI and had gathered before the Press Club for agitating some cause, and not to create any law and order situation. None of them was armed with club, stick, bat or danda, let alone any firearms to presume their intentions were ulterior or criminal and they wanted to take the law in their hands. It is alleged only that they had lobbed stones to the police party and as a result of which windscreens of few mobile vehicles were smashed injuring some members of the police team. Those injuries, as pointed out by the learned counsel for applicants, are minor in nature falling either u/s 337-A(i) or 337-F(i) PPC, bailable, and could be sustained by police while handling with any size of unruly mob of people, irrespective of their intention to commit any crime or not.

7. Since the injuries are minor and mostly on lower part of the body of police men, it cannot be said with certainty whether those injuries were sustained by them from the stones or from the shreds of windscreens of police mobiles, not even made as case property as is evident in the Challan, on account of their own negligence to handle and control the situation adequately. But, in any case, it is apparent that the action of pelting stones of the accused was not designed to coerce and intimidate or overawe the government, the public, a section of the public or community or sect, nor their action was for the purposes of advancing a religious, sectarian or ethnic cause or intimidating and terrorizing the public, social sectors, media persons etc. to be bracketed as terrorism. Even FIR does not allege that from alleged act of accused/applicants, any terror was created, or their action was designed and motivated to create terror in the society or advance any religious agenda or any other purpose which could be labeled as terrorism as defined above. It has been simply alleged that they pelted stones to police party with intention to commit murder. But the question is whether mere such allegation in FIR is sufficient to satisfy requirement of section 324 PPC and 6/7 Anti-Terrorism Act,

1997. The reply would be a big no, mention of such allegations in FIR would not transform act of applicants/accused as terrorism or even an attempt to take life of police force -- to attract scheme u/s 324 PPC -- which on the contrary was duly armed with official weapons and in the face of real threat to their life would not have hesitated to use them. Non use of weapons by the police force in retaliation of alleged stone-pelting by the workers of a political party itself is signature that the police force did not feel even threatened, what to say terrorized.

8. In view of above discussion and definition of terrorism, finally settled by the Honourable Supreme Court in Ghulam Hussain's case (*supra*), and the outlines drawn therein within which an action can be termed as terrorism, we are of the view that the rowdy behavior of the applicants / accused, amendable to some penal laws notwithstanding, was not an act of terrorism, nor the accused MNA Lal Chand Malhi or the workers of PTI, a political party, could be termed as terrorists against allegations of lobbing stones to police force, which is yet to stand the test of the trial. On the contrary, the political activity carried out within bounds of law is a healthy activity and it is necessary for social and political uplift of the society having domino effect trickling down to overall improvement in every sphere of human life. It cannot and should not be discouraged by registering criminal cases against the political workers, unless of course some law is broken. Disobedience of section 144 CrPC, as is the case here, is visit-able by section 188 PPC mainly, and/or any other relevant provisions of law but not under the provisions of Anti-Terrorism Act, at least. We, therefore, allow this application and withdraw the case from the file of Anti-Terrorism Court Mirpurkahs and transfer it to the learned Sessions Judge Umerkot to try either himself or assign it to any Additional Sessions Judge for a trial in accordance with law.

JUDGE

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