IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Miscellaneous Application No.D-04 of 2023

Applicant	:	Roshan Ali son of Piyaro Khan Khoso through Mr. Abdul Qadir Khoso, advocate.
Respondents-1 to 4	:	The State through Mr. Shewak Rathore, Deputy Prosecutor General Sindh.
Respondents-5,6,8,9 and 11:		In person.

Date of hearing : 01.08.2023
Date of decision : 01.08.2023

O R D E R

KHADIM HUSSAIN TUNIO, J– Through this criminal miscellaneous application under Section 561-A, Cr.P.C, the applicant Roshan Ali has assailed the order dated 10.02.2023, passed by the Anti-Terrorism Court-I, Hyderabad whereby the learned Judge returned the challan to the investigation officer with directions to present it before a court of ordinary jurisdiction.

2. A brief background of the relevant accusations levelled against the private respondents is that over the course of three months, on the show of weapons, they used to extort money from the crushing plant rented by the applicant Roshan Ali and on 01.12.2022 at about 1000 hours, on the applicant's refusal, the private respondents allegedly issued him threats of dire consequences among other things.

3. Mr. Abdul Qadir Khoso, learned counsel for the applicant has contended that the private respondents admitted before the police during inquiry that they were receiving extortion from the applicant; that the police has joined hands with the private respondents due to them being influential people and is bent upon submitting the charge sheet before the ordinary court without the insertion of section 386 PPC, as such he prays that the charge sheet be submitted before the Anti-Terrorism Court with the insertion of section 386 PPC.

4. On the other hand, learned DPG for State along-with private respondents have supported the impugned order while contending that

the applicant has not even mentioned the word *bhatta* in the FIR and the Anti-Terrorism Court has rightly returned the documents back to the IO for presentation before the ordinary court.

5. Heard learned counsel for the applicant, learned DPG as well as private respondents and perused the record with their assistance.

6. Over the course of a few decades, the legislature has legislated various laws to counter the menace of terrorism, one of which is the Anti-Terrorism Act 1997 whereby certain Courts, notified as an Anti-Terrorism Court, have been given the mandate to try offences that would otherwise fall within the meaning of '*terrorism*'. Overtime, the meaning of the word terrorism[1] expanded and knew no limit so as a safeguard, the law had to be interpreted in such a way to not take an act on its face value, but also look at the intent or purpose of the act thereof. In the present case, for one, the appellant failed to even mention the word bhatta or disclose regarding the weapons used by the private respondents or even the amount allegedly taken over the course of three months. The motive behind the incident lacks and no specific overt act has been attributed to any of the private respondents separately nor has the applicant alleged in the FIR that the act of the private respondents terrorized anyone and it has been settled principle that such like cases do not attract the provisions of the Act 1997.[2] For the purpose of exercising powers u/s 23 of the Anti-Terrorism Act 1997 *(Act of 1997)*, the Court does not have to wait for the parties to adduce evidence or for the Court to frame charge before establishing whether a crime is triable by the Anti-Terrorism Court or a Court of ordinary criminal jurisdiction. The material placed before the Court i.e. the challan in terms of S. 173 Cr.PC is sufficient to decide this question.[3] Merely because the Act of 1997 provides under S. 6(2)(k) that extortion could be tried by the Anti-Terrorism Court does not automatically mean that it would squarely come within the jurisdiction of an Anti-Terrorism Court alone. S. 6 of the Act 1997 is a strict *mens rea* offence; where it is important to allege such *mens rea* as established in S.

---

[1] The Anti-Terrorism Act, 1997 was amended through the Anti-Terrorism (Amendment) Ordinance, 2001 (Ordinance No. XXXIX of 2001); the term 'terrorist act' with its definition contained in section 6 of the Act was substituted and replaced by the term 'terrorism'

[2] See Sagheer Ahmed versus State, 2016 SCMR 1754

[3] See Ali Gohar versus Parvaiz Ahmed, PLD 2020 SC 427

6(1)(b) or (c) alongside the *actus reus*.[4] The seminal judgment passed in ***Ghulam Hussain's*** case[5] by a seven member bench of the Supreme Court, realizing the overarching effects of a wide interpretation of the term *'terrorism'*, making it ambiguous, unclear or politically motivated, took the initiative of setting in stone the principle now followed far and wide through the Courts of this country–while taking cognizance of a case, or otherwise, on receiving the challan are to examine the facts of the case as narrated in the FIR and to determine whether incident reported is an act designed to coerce, intimidate or overawe any government body, both foreign and domestic, and create a sense of fear[6] or insecurity **or** to advance a religious, sectarian or ethnic cause.[7] In the present case, the facts as set out in the FIR, do not reflect such design and motive. A relevant excerpt from ***Ghulam Hussain's*** case *(supra)* is reproduced hereunder for ready reference:-

> "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.***"
>
> ***(emphasis supplied)***

7. Resultantly, instant criminal miscellaneous application being meritless was dismissed and the impugned order passed by the learned Judge of the Anti-Terrorism Court-I Hyderabad was upheld vide short order dated 01.08.2023, reasons of which are above.

J U D G E

J U D G E

---

[4] See Waris Ali versus State, 2017 SCMR 1572
[5] PLD 2020 SC 61
[6] S. 6(1)(b) of the Anti-Terrorism Act, 1997
[7] S. 6(1)(c) of the Anti-Terrorism Act, 1997