

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Revision Appln. No.D- 31 of 2021

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE.
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1. For orders on M.A. No.4962/21.
2. For hearing of main case.

Mrs Justice Rashida Asad, J
Mr Justice Khadim Hussain Soomro, J

Date of hearing. 24.08.2023.
Date of announcement 07.09.2023

Mr. Manzoor Hussain Halepoto, Advocate for applicant/
complainant.

Mr. Irshad Hussain Dharejo, Advocate for respondents.

Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

ORDER

KHADIM HUSSAIN SOOMRO, J; Through instant application, applicant Mst. Nazeeran @ Naji has prayed for setting aside the impugned order dated 05.10.2021, whereby the application under Section 23 of Anti-Terrorism Act, 1997 for transfer of this case filed by accused/respondents to the Court of ordinary jurisdiction, has been allowed by the Judge, Anti Terrorism Court, Sukkur.

2. Briefly, facts relevant to the disposal of this application are that on 17.02.2014, at about 1700 hours, complainant Mst. Nazeeran lodged the F.I.R. against the accused persons at Police Station, Sorah, wherein she stated that she possessed an open plot near her house and on the day of the incident, viz. 17.02.2014, at 10:00 a.m., she, accompanied by her sons Sadam Hussain, Peeral, and Munawar Mallah, engaged in the process of cleaning the aforementioned property. When at about 10:00 a.m, accused persons, namely, Irshad Ali Aradin and Ghulam Murtaza,

armed with Kalashnikovs, Naseer Aradin, Toto Mallah, and Haji Ghulam Rasool armed with Repeaters, Muhammad Ali and Nawab armed with pistols, Suleman, Gaman and Mumtaz armed with Kalashnikov, Ameer Ali, Mehar, Ghulam Rasool, Gulab and Allah Rakhio @ Marho armed with guns, Shabir and Allah Warayo armed Repeaters, Mubarak, Azam and Badal armed with Guns, Shahan @ Shahoo and Sajjad armed with Kalashnikovs, Gulzar armed with Gun, Lal armed with Kalashnikov, Aijaz armed with pistol, Ghulam armed with Gun, Mashooque and Yaseen armed with pistols along with 20/21 unknown accused persons armed with Guns, pistols, hatchets and wooden sticks came there, out of them, accused Muhammad Ali, allegedly engaged in abusive behaviour towards the complainant party and thereafter the accused forcefully removed the complainant party from the plot. In the presence of the complainant, all accused individuals, armed with weapons, and Muhammad Ali, one of the accused, proceeded to ignite a fire on the house belonging to Sadam Hussain, while Ghulam Rasool, another accused, flared up the house of the complainant's brother-in-law. Additionally, the accused fired shots in the vicinity of the complainant party's houses, causing panic, terror, and a sense of insecurity. Furthermore, Irshad Ali, Nazeer, Allah Rakhio, and several unidentified accused individuals began to dismantle and demolish the Imam Bargah, which belonged to the complainant party. They also caused damage to the 'Dikki' of Alam Pak and forcibly brought down the Alam Pak to the ground. The complainant party raised cries, and on such cries and firing of the accused persons, the co-villagers came there, and on reaching there, all the accused persons made their escape good. Thereafter, the complainant lodged the F.I.R. at Police Station, Sorah, to the above effect.

3. After investigation, challan was submitted before the Court of Anti-Terrorism, Khairpur; thereafter, the accused/respondents filed application u/s 23 of Anti-Terrorism Act, 1997 before learned Judge, Ant-Terrorism Court, Khairpur, and after hearing the parties, the said application was dismissed by learned Judge, Anti-Terrorism Court, Khairpur vide order dated 08.07.2017. Thereafter, the accused/respondents challenged the said order dated 08.07.2017 passed by learned Judge, A.T.C. Khairpur, before this Court in CrI. Misc. Application No. D-600/2017, which was dismissed for non-prosecution vide order dated 02.05.2019 with permission to repeat the same before the trial Court after recording evidence on ocular account of evidence. Consequently, a second application was filed, which was subsequently allowed, leading to this revision against the impugned order.

4. Mr. Manzoor Hussain Halepoto, learned Counsel for applicant/complainant, submits that as per FIR, the accused had various weapons such as Kalashnikovs, Repeaters, pistols, guns, hatchets, and sticks, and they engaged in indiscriminate firing outside the residences of the complainant party. Additionally, they caused damage to the 'Dikki' and forced the Alam Pak, which was upraised within the Imam Bargah, to fall down. These actions have resulted in a sense of fear and insecurity among the general public.

5. Mr. Irshad Hussain Dharejo, learned Counsel for accused respondents, submits that the offence does not fall within the parameter of the Special Court established u/s 13 of Anti-Terrorism Act, 1997. He submits that the Police have misapplied Section 7 of the Anti-Terrorism Act, 1997; however, no such ingredients of Section 7 of A.T.A, 1997 attracted in the instant case. The Counsel for the respondents contended

that neither the complainant nor the witnesses have indicated that the alleged incident occurred as a result of religious or sectarian motives. Contended further that the narrative does not specify the religious sect of the complainant party and the accused persons; finally, he argued that the First Information Report (F.I.R) and subsequent investigation have not substantiated any evidence in support of terrorism. Contrarily, he asserts that there was no fear, panic, and a sense of insecurity among the general people. He conclusively argued that this case was motivated by personal vendetta or animosity. In support of his contentions, he placed reliance upon cases of **1. *Bashir Ahmed v. Mohammad Siddique and others (PLD 2009 Supreme Court 11)***, **2. *Hazoor Bux and another v. The State and another (PLD 2012 Sindh 469)***, **3. *Waris Ali and 5 others v. The State (2017 SCMR 1572)***.

6. Mr Shafi Muhammad Mahar learned Deputy Prosecutor General in view of the dictum laid down in the case of *Waris Ali and five others v. The State (supra)* has conceded that hostility existed between the parties and the crime has been committed due to the private dispute over possession of plot; therefore, this crime does not fall within the meaning of terrorism or terrorist activities; therefore, he submits that order of the trial Court is justified and is liable to be maintained.

7. We have given patience hearing to the arguments advanced by the learned Counsel representing the parties and have gone through the relevant documents on record. In order to gain a comprehensive understanding of this jurisdictional challenge, it is essential to acknowledge that the Act in question is specific legislation designed to address the prevention of terrorism, sectarian violence, and the expeditious trial of serious offences. In pursuit of this objective, the

legislature has, inter alia, provided a special procedure for registration, investigation and trial for the commission of the offences triable thereunder. The subject pertains to the jurisdiction vested in the ATC to transfer a case under section 23 of the Act. In order to examine the scope of ATA to transfer the case, it is necessary to scrutinize the provision outlined in section 23 of the Act. These provisions are as follows:

Section 23

“ Power to transfer cases to regular courts. Where, after taking cognizance of an offence, [an Anti-terrorism Court] is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction under the Code, and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence”.

8 . The august Supreme Court has resolved the ambiguity surrounding the definition of terrorism in its judgment in the case of Ghulam Hussain v. The State (PLD 2020 SC 61), which has provided clarity on the criteria for determining acts of terrorism under sections 6 and 7 of the ATA. Let us reproduce the relevant paras from Ghulam Hussain v. The State (supra) at some length:

"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 labelled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta."

9 . As mentioned earlier, it is evident from the analysis that the august Supreme Court of Pakistan, in the above case, has provided definitive clarification on two commonly misunderstood aspects regarding the definition and application of the term "terrorism" under the Act. Firstly, it has been decided that regardless of the severity, shock value, brutality, gruesomeness, or horror of an offence, it cannot be characterized as an act of terrorism unless it is committed with the specific intent or purpose outlined in clauses (b) or (c) of subsection (1) of section 6 of the aforementioned Act. Secondly, even if an offence falls directly within the parameters outlined in subsection (2) of section 6, it cannot be deemed an act of "terrorism" if it is motivated by a personal dispute or vendetta.

10. As per the contents of F.I.R, all accused, on the point of weapons, surrounded the houses of the complainant party and accused Muhammad Ali took out matchbox and set the house of Sadam Hussain on fire while accused Ghulam Rasool set alight the house of complainant's brother-in-law and also made aerial firing which shows that there existed previous dispute between the parties in respect of the plot, which does not fall within the definition of section 6 of the Anti-

Terrorism Act 1997. The facts of personal dispute between the parties are clearly mentioned in the F.I.R that the applicant/complainant and accused/respondents had developed some dispute over possession of the plot where, as usual, upraised 'Alam Pak' and due to that personal grudge made ineffective firing as well as set on fire the houses of the complainant party cannot be regarded as a terrorist act, in view of dictum laid down in the afore-referred judgment of the esteemed Supreme Court. Furthermore, it is worth noting that the mushirnama, prepared by the investigating officer Muhammad Ameen Pathan, does not show the location where "Alam Pak" fell on the ground, and the same has not been secured during the investigation.

11. Consequently, we dismiss instant criminal revision, and the impugned order dated 05.10.2021, being well reasoned, does not call for interference; therefore, the same is hereby maintained. We notice that the matter pertains to the year of 2014; therefore, we direct that the trial court shall continue to proceed with the trial on a day-to-day basis so that the learned Sessions Judge, Khairpur, either keep this case on his own file or entrust it to any other Court which shall conclude the proceedings expeditiously and render a judgment not later than sixty (60) days from the date of the first hearing.

Revisions stands disposed of in the above terms.

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