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**IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
LARKANA**

**Cr. Revision Application No.D-01/2017**

**Present:**

**Mr. Justice Muhammad Junaid Ghaffar.**

**Mr. Justice Khadim Hussain Tunio.**

**Wajid Ali Jatoi-----Applicant.**

**Versus**

**The State & another -----Respondents.**

**Date of hearing: 30-08-2017**

**Date of Order 12-10-2017**

**Applicant: Through M/s. Habibullah G. Ghouri and  
Ali Nawaz Ghanghro, Advocates.**

**Respondent No.1: Mr. Khadim Hussain Khoohari, Addl.  
P.G.**

**Respondent No.2: Mr. Sarfaraz Khan Jatio, Advocate.**

**ORDER**

**Muhammad Junaid Ghaffar, J.** Through this Criminal Revision Application, the Applicant has impugned Order dated 28.01.2017, whereby, the Application under Section 23 of the Anti-Terrorism Act, 1997 for transfer of Specail Case No.32/2016 to the ordinary Court of Sessions has been dismissed by the Anti-Terrorism Judge, Larkana.

2. Precisely, the facts of the Case in Crime No. 64/2016, as stated by Muhammad Jatoi on 22.5.2016 at 0330 hours,

“that, he own a wood cutting machine, where accused Haji Bashir used to say to complainant that in case, he wants to run the affairs of Saw machine, then Bhatta is to be given and in case, of failure he will not allow in running the



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affairs of Saw machine. Accused used to threaten the complainant for facing the dire consequences and colossal and unforgettable damage. Last night, complainant along with his son Yasir aged about 18/19 years with P.Ws. Abdul Sattar, Izat Khan at 2.00 A.M (night) were working on the Saw machine, where one Vitz company vehicle was parked from which accused Haji Bashir with Klashinkov, Wajid Ali with Klashinkov, Rizwan with Repeater came down, where accused Haji Bashir started saying that no Bhatta was given to him, therefore, close the Saw machine, saying so, he instigated his son Wajid Ali to get stopped Saw machine and also commit the murder of complainant party. Accused Wajid Ali at the instigation of his father Haji Bashir directly fired from his weapon with an intention to commit murder co-accused Bashir Ahmed and Rizwan Ali by spreading terrorism made aerial firing, thereafter, accused Bashir Ahmed, Wajid Ali, Rizwan Ali decamped in the same vehicle. Complainant saw that his son had received fire shots in his forefront side of head which was through and through who became unconscious. Injured was taken to Larkana CMC Hospital, unfortunately who succumbed to his injuries in the way. Complainant leaving P.Ws. in hospital for safeguarding the dead body came at P.S. and lodged F.I.R. During course of investigation Police inspected place of occurrence, arrested accused Wajid Ali and at his pointation Kalashnikov was recovered and lodged separate crime No. 69 of 2016. Police recorded 161 Cr.P.C statements of prosecution witnesses. During further course of investigation, Police recorded statements of independent witnesses namely Azam Khan, Waseem Hussain, Khadim Hussain, Mukhtiarkar Hussain, Hussain Bux, Ghulam Ali and Amjad Hussain who stated that accused Bashir Ahmed is billionaire and due to old enmity by making exaggeration and hyperbole in the FIR twist in the story had been made and no offence of Anti-Terrorism Act had been committed.”

3. Learned Counsel for the Applicant has contended that the learned Judge has erred in dismissing the Transfer Application as from perusal of the FIR no case for extortion of money is made out as the complainant has not given any date, place or time of alleged demand of Bhatta; that an ordinary case has been converted into a terrorism case merely by mentioning the word “Bhatta”, whereas, the case falls within the ambit of Section 386 PPC; that the complainant never approached the Police authorities before this FIR regarding any demand of “Bhatta”; that the parties have matrimonial dispute amongst themselves and earlier FIR No.114/2000 was registered against one of the witnesses in this case; that the applicant is a respectable businessman and regularly paying his tax, and therefore, it is inconceivable that any



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demand of "Bhatta" could be made by him. In support he has relied upon the case reported as **2016 SCMR 1754 (Sagheer Ahmed v. The State and others)** and Orders passed by this Court at Circuit Court, Larkana dated **24.05.2012** in **Cr. Misc. Application No.D-295 of 2012**, dated **08.11.2016** passed in **Cr. Revision Application No.D-14/2016** and dated **06.09.2016** passed in **Cr. Misc. Application No.D-09/2015**.

4. On the other hand, Counsel for Complainant has contended that the main motive is demand of "Bhatta", whereas, no enmity exists in between the parties; that earlier a similar sort of application was filed by the same applicant before the Principal Seat in Criminal Transfer Application No.16/2017 and the same was withdrawn vide Order dated 24.03.2017 and therefore the impugned order is correct in law. Similarly, the learned Addl. P.G has contended that apparently a demand of "Bhatta" was made by the accused parties and therefore the complainant must be given a chance to prove his case, whereas, no serious prejudice will be caused to the applicant if the matter is decided by the Special Court. In these circumstances, he has supported the impugned order.

5. We have heard all the learned Counsel as well as learned Addl. P.G. and have perused the record.

6. Apparently the case, as narrated in the FIR, appears to be that the Complainant owns a Saw machine, whereas, one Ghulam Jatoi was repeatedly asking him that if he wants to run his business of Saw Machine then he should pay "Bhatta" to him, which he refused to pay and this annoyed him. It is further stated that on the night prior to the date of FIR when he was working at his Saw machine along with his cousins and nephew around 2:00 a.m in the night all the accused came to them, who were armed with Kilashankoves and Repeaters Guns and said that since I have not paid "Bhatta", therefore, the Saw machine be closed and thereafter the applicant was instigated to close the saw machine and not to spare and thereafter applicant fired with a view to kill



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his son Yasir which hit his head and he after raising cry fell down and thereafter expired whereas, all accused started the firing in air to create terror and harassment and during this process my son was killed.

On bare perusal of the FIR, it is only the version of the Complainant, wherein, he has stated two things, which has resulted in ending up of this case as a case of terrorism. First he has stated that "Bhatta" was demanded repeatedly and upon refusal, accused party came on the date of incident and then after firing by one of them his son was killed whereafter they ran away, Secondly, he has stated that they made aerial firing to create sense of insecurity. On this basis the case has been registered by insertion of Section 6 & 7 of the ATA Act along with Sections 302, 386, 114, & 34 PPC. The case of extortion of money (Bhatta) admittedly falls within Section 6(2)(k) of the said Act.

It further appears that earlier when investigation was carried out a Joint Investigation Team was constituted, who had placed its report before the learned Judge Anti-Terrorism Court, wherein, they had stated that this is not a case of Terrorism and accordingly it should be transferred to the Ordinary Court of Sessions Judge. However, such report was not accepted by the learned Judge through Order dated 6.6.2016 which was impugned on behalf of the applicant in Cr. Revision Application No.16/2016 and the same was not pressed on the ground that a proper Application under Section 23 of the Anti-Terrorism Act would be filed.

7. On an overall perusal of the FIR and Report of the Police officials, to our mind it appears that this is not a case, which should be tried under the Anti-Terrorism Act. The first reason being that in the FIR, the Complainant has stated that the accused party was repeatedly asking for "Bhatta". However, it is an admitted position that no complaint whatsoever was registered by him in this regard though according to his own version it was being demanded repeatedly. Secondly, it is also not stated that what the complainant means by *repeatedly* as no specific date, time and place has been mentioned. Thirdly, the incident as reported happened at around 2:00 a.m when there would not have been any

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people around the Saw machine of the Complainant; therefore, even aerial firing could not have caused any terror or panic amongst the locality generally.

8. The Honourable Supreme Court in the case of **Sagheer Ahmed (supra)** has pleased to approve the observations of a learned Division Bench of this Court at Sukkur in more or less similar circumstances, when the complainant in his allegation of demanding "Bhatta" had failed to disclose specific dates, time and place nor any sufficient evidence was produced to establish such allegations. Same is the case here that the Complainant has miserably failed to report the incident of alleged demand of "Bhatta". The observation of the Honourable Supreme Court squarely applies to the facts of this case.

9. Similarly in the case of **Ghulam Sarwar v. The State (2013 YLR 1135)** a learned Division Bench of this Court has observed as under:-

"8. Record reflects that complainant has alleged in F.I.R. that two months prior to the present incident, applicant / accused had demanded bhatta from him but no F.I.R. of said incident was lodged. Apparently, it is unbelievable that after two months of leaving job by complainant, applicant / accused on account of non-payment of bhatta made aerial firing and, threatened him of dire consequences outside of his house. Even otherwise, from the contents of F.I.R. and other material collected during investigation, no offence triable under Anti-Terrorism Act, 1997 is made out for the reason that element of striking of terror or creation sense of fear and insecurity in the people or any section of the people is not made out. Ingredients of exhortation of money as defined in section 6(2)(k) of Anti-Terrorism Act, 1997 are also not made out from the facts of the case. Moreover, episode occurred at the house of the complainant appears to be between two individuals. Haji Haroon Memon, owner of petrol pump has exonerated accused for his involvement in extortion of money. In the case of Ch. Bashir Ahmed v. Naveed Iqbal and 7 others (PLD 2001 Supreme Court 521) it is observed that"

10. The Honourable Supreme Court in a recent case of **Waris Ali & others v. The State** (Cr. Appeal No.104/2010) while dealing again with this issue that as to whether a case falls within the scope of Ant-Terrorism Act, 1997 or not has been pleased to observe as under:-



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"Not only the preamble to the Special Act but majority of the substantive provisions are clearly directed to deal with terrors, terrorist activities and terrorist organizations. After careful study of the entire scheme of the Special Act, with a deep thought, the only legitimate conclusion thus would be that barring specified crimes, the conventional or customary crimes like murder, attempted murder, causing hurt and theft, etc. are not included in the scheme of the Special Act. In the same way, offences of murder, causing bodily harm or hurt with whatever weapon in places other than those mentioned in the Schedule where, element of terrorism is not perceivable from the facts of a particular case, the same shall not come within the mischief of terrorism or terrorist activities. The courts of law shall not lightly ignore that being a harsh law, enacted to punish terrorists, hardcore militant and those involved in offences, specifically mentioned in the Schedule or other provisions of the special Act, the same cannot be liberally extend to cover criminals who commit crime of murder, hurt or of attempted murder for any reason or motive, having no nexus with terrorism or militancy.

24. True, that in section 6 read with section 7 of the Special Act, offences of murder, attempted murder or causing bodily hurt or injury have been made cognizable by the Special Court, however, from the qualifying words, preceding the description of offences under sub-section (1) of section 6 read with the provisions of section 7 the intention of the Legislature becomes perceivable / visible that in committing these crimes essentially the element of "terrorism" shall be persuasive factor, however, other category of crimes duly spiffed and listed in Special Act shall fall within the ambit of provision of same being act of terrorism in that regard. The manifest intent of the Legislature does not leave behind any doubt for debate.

25. In certain circumstances, offences of murder or bodily harm, committed by the individuals in a sudden fight, even at public places, due to sudden flare up where the reason preceding such fight is concealed by both the parties, shall also not fall within the definition of terrorism because the object to be achieved is not terrorism or to carry out terrorist actives, therefore courts shall not hurriedly jump at the conclusion that any such offence(s) are acts of terrorism in all open and shut cases of ordinary crimes where object is not terrorism nor the culpable act committed is directed to carry out terrorist actives, shall not be forcibly brought within the ambit of the provisions of Special Act.

27. If the Legislature intended to bring the crimes of routine murder, attempted murder or causing bodily hurt within the ambit of the provisions of the Special Act then, it would have not employed the word or terrorism or terrorist activities. The comprehensive list of terrorism related offences against the public at large / society and in particular places of worship and educational institutions, offences against law enforcing agencies,

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armed forces, is the clear manifestation of intent of the law givers. This fact by itself signifies the intention of the Legislature what it actually intended to achieve. Although, incidentally, in ordinary crimes sometimes, the damage caused to human life might be devastating, gruesome and heart sickening, however, this by itself would be not sufficient reason to bring the crime within the fold of terrorism or to attract the provision of section 6 or section 7 of the Special Act, unless the object intended to be achieved was falling within the category of crimes, clearly perceivable to create terror in people or / and sense of insecurity.”

11. In view of hereinabove facts and circumstances of this case, we are of the view that the learned Judge of the Anti-Terrorism Court has not appreciated the facts of this case in a true perspective and has involved himself in a discussion, which otherwise ought not to have been done and we have restrained ourselves from passing any adverse comments on his discussion as contained on Page 4 & 5 of the impugned order. However, reluctantly we may observe that this kind of observation must be avoided in future. Accordingly, while allowing this Criminal Revision Application, hereby set-aside the impugned Order dated 28.01.2017 and hold that the Terrorism Court has no jurisdiction to try this case and issue directions for transfer of the case from Anti-Terrorism Court Larkana to the Court of Sessions having appropriate jurisdiction.

12. The Criminal Revision Application allowed in the above terms.

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Judge

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Judge

*Approved by us*

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12.10.17

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