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ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Misc. Appln. No. D- 24 of 2017.
Crl. Misc. Appln. No. D- 25 of 2017.

Date of hearing	Order with signature of Judge
17.01.2018.	

Mr. Athar Abbas Solangi, Advocate for applicants in Crl. Misc. Appln. No. D- 24 of 2017.

Mr. Abdul Sattar Soomro, Advocate for applicant in Crl. Misc. Appln. No. D- 25 of 2017.

Mr. Muhammad Murad Chacher, Advocate for complainant.

Mr. Khadim Hussain Khooharo, Addl. P.G.

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**Muhammad Iqbal Kalhoro, J:** By this single order the two captioned criminal miscellaneous applications in hand are disposed of.

2. The applicants are accused in Crime No.43/2017 registered at Police Station Kashmore for the offence under Sections 324, 337-H (2), 506 (2), 34 P.P.C read with Sections 6/7 of Anti-Terrorism Act, 1997, and are facing the trial before Anti-Terrorism Court, Kashmore @ Kandhkot in Special case No.21/2017 in respect of the above offences and Special case No.22/2017, which has been registered as Crime No.44/2017 under Section 23 (1) (a) of the Sindh Arms Act, 2013. Both these case have been amalgamated by the learned Anti-Terrorism Court into a single trial as Special Case No.21/2017. In the course of trial, the applicants moved an application under Section 23 of Anti-Terrorism Act, 1997, for transfer of the said two cases to the Sessions Court having jurisdiction. Those applications have been dismissed vide impugned Order dated 13.12.2017. Being aggrieved by the said order, these two criminal miscellaneous applications have been filed by the applicants before this Court.

3. Mr. Athar Abbas Solangi, Advocate for applicants in Crl. Misc. Appln. No. D- 24/2017, has contended that the prosecution story does not attract the provisions of Anti-Terrorism Act, 1997; that only ineffective firing has been attributed to the accused; that there is rivalry

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between two groups working in the same office and this case is a result of previous enmity between the parties. It has been further contended that in various judgments passed by the Hon'ble Supreme Court as well as this Court the word terrorism has been defined and this case does not fall within such definition of terrorism, therefore, the impugned order is not sustainable in law. He has supported his contentions by relying upon case of *Mohabbat Ali and another v. The Tate and another* (2007 SCMR 142), *Bashir Ahmed v. Muhammad Siddique and others* (PLD 2009 Supreme Court 11), *Ahmed Jan v. Nasrullah and others* (2012 SCMR 59), *Bismillah Khan and another v. The State* (2013 P.Cr.L.J 1720), *Ishq Ali v. The State and 2 others* (2013 P.Cr.L.J 1808), *Saif Ullah Saleem and others v. The State and others* (2013 P.Cr.L.J 1880) and *Sagheer Ahmed v. The State and others* (2016 SCMR 1754).

4. - Mr. Abdul Sattar Soomro, Advocate for applicant in Crl. Misc. Appln. No. D- 25/2017 has adopted the arguments advanced by Mr. Solangi and in addition he has relied upon 2013 YLR Sindh 1135 and 2013 P.Cr.L.J 52.

5. On the contrary, counsel for complainant has supported the impugned order. According to him, the offence has been committed against a public servant viz. complainant, who is Chairman of the Town Committee Kashmore and as such the provisions of Section 6 (n) of Anti-Terrorism Act, 1997, are attracted. In support of his contentions, he has relied upon 2016 P.Cr.L.J 463.

6. The learned Addl. P.G. has contended that applicants are not terrorists as there is no such record available against them. According to him, the offence alleged against the applicants is not a scheduled offence and appears to be result of a conflict of interest between the two office holders in the same Town Committee.



7. We have considered the submissions of the parties and have perused the material available on record. The record reflects that complainant is Chairman of Town Committee Kashmore, whereas applicant Abdul Waheed is posted as Town Officer in the same Town Committee. The facts narrated in the F.I.R are that on the date of incident the complainant was presiding over a meeting held in respect of some program to be arranged on the occasion of 23<sup>rd</sup> March, 2017, when all the accused, four in number, came in his office and chanted slogans against Pakistan and then after exchange of hot words accused/ applicant Abdul Waheed made a direct fire on the complainant but luckily it did not hit him but to a portrait of Quaid-e-Azam available behind him. It is further alleged that during incident the other accused also made aerial firing. And after they departed from the scene of incident; their weapons were recovered leading to registration of a case bearing Crime No.44/2017 under Section 23 (1) (a) of the Sindh Arms Act, 2013 against applicant Abdul Qadir.

8. Now insofar as the allegations of chanting slogan against Pakistan are concerned, even the Investigating Officer did not find them trustworthy, as during investigation he has deleted the relevant section 124-A P.P.C, which is attracted on commission of such offence. There is no material on record to show that such opinion of the investigating officer was challenged by the complainant before any forum. The allegation against the applicants are at the most of making ineffective firing, which does attract any scheduled offence under Anti-Terrorism Act, 1997. More, so the offence appears to be a result of differences between the two rival groups working in the same office. This is not a case involving a serious violence against the complainant party to attract the provisions of Section 6 (n) of the Anti-Terrorism Act, 1997 as argued by learned counsel for the complainant.

9. The Hon'ble Supreme Court of Pakistan in case of *WARIS ALI and 5 others v. The State (2017 SCMR 1572)*, has held that "*in case of terrorism 'mens rea' was essentially the object to carrying*

out terrorist activities to overawe the State, the State institutions, the public at large, destruction of public and private properties, assault on the law enforcing agencies or the public at large---- Ultimate object and purpose of such acts was to terrorize the society or to put it under constant fear, while in ordinary crimes committed due to personal vengeance/ blood feud or enmity, the element to create fear or sense of insecurity in the society or public by means of terrorism was always missing.”

10. <sup>After</sup> taking guidance from the above dictum laid down by the Hon'ble Supreme Court, it becomes obvious to us that in the facts and circumstances as stated above, the provisions of Anti-Terrorism Act, 1997, are not attracted to the instant case. The trial Court has erred in rejecting the applications under Section 23 of Anti-Terrorism Act, 1997 for transfer of the cases.

11. We for the foregoing reasons allow these applications, as a result whereof the files/ R & Ps of the two cases mentioned above pending on the board of Anti-Terrorism Court, Kashmore @ Kandhkot are hereby ordered to be withdrawn and are transferred to the learned Sessions Judge, Kashmore @ Kandhkot, with directions to either proceed with the same himself or to assign them to any other Court competent to try the same for disposal in accordance with law. Both these applications in above terms are disposed of.

*Keelgi*  
17-1-2018  
JUDGE

*[Signature]*  
JUDGE 17-1-2018