

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Revision Appln. No. D- 14 of 2016.

Date of hearing	Order with signature of Judge
08.11.2016.	

1. For Katcha Peshi.
2. For hearing of M.A. No. 3406/2016.

Mr. Ahsan Ahmad Quraishi, Advocate for applicant.
Mr. Ali Azhar Tunio, Advocate for complainant.
Mr. Sardar Ali Rizvi, A.P.G.

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**Muhammad Iqbal Kalhoro, J:** Applicant is accused in F.I.R No.162/2014, registered at P.S Darri, Larkana, on 26.12.2014 for having committed the offences punishable under Sections 302, 386, 148, 149 P.P.C read with Section 6-K (ii) of the Anti-Terrorism Act, 1997, and in connection of which he is facing trial in Special Court No.03/2015 before the Anti-Terrorism Court, Larkana, where he moved an application under Section 23 of Anti-Terrorism Act, 1997 for transfer of the said case to the ordinary Court having jurisdiction, but his application has been dismissed vide impugned Order dated 20.8.2016.

2. Applicant's case is that the subject F.I.R is outcome of previous enmity between him and the complainant party and in support of such contention his counsel namely, Mr. Ahsan Ahmad Quraishi has referred to several F.I.Rs registered by the parties against each other. It has been also argued by the learned counsel that Section 386 P.P.C has been malafidely included in the F.I.R to make it a case triable by the Anti-Terrorism Court, which, otherwise, from the face of record is not attracted. The F.I.R has been registered by a lady, who has taken the names of each accused with their parentage, which shows that she was already knowing them and in such situation demand of "Bhatta" is unbelievable and the case appears to be triable by the Sessions Court. In support of his arguments learned counsel has relied upon PLD 2005 S.C 530 and 2000 P.Cr.L.J 1195.

3. On the other hand learned counsel for the complainant Mr. Ali Azhar Tunio has supported the impugned order and has further stated that from the contents of F.I.R, the allegation of demanding "Bhatta" by the applicant/accused from the deceased are borne out, as such the case is exclusively triable by the Anti-Terrorism Court. He has further contended that the offence has been committed in a daytime in presence of many people, which has caused a sense of fear, insecurity and terror in the people of vicinity and therefore the case is triable only by the Anti-Terrorism Court. He has relied upon 2007 YLR 155 in support of his arguments.

4. Learned A.P.G., however has not supported the impugned order. His contention is that neither the financial status of the deceased nor any source of his income has been mentioned in the F.I.R, so as to even prima facie attract the allegation of demanding "Bhatta" by the accused from him. To support his contention, learned A.P.G. has relied upon a case reported in 2016 SCMR 1754.

5. We have considered the submissions and perused the material available on record, so also the case laws cited at the bar. The instant F.I.R appears to have been registered by wife of the deceased namely, Muhammad Hafeez, wherein, she has alleged that on the day of incident, she, her sister namely Anila Khatoon and her deceased husband Muhammad Hafeez had gone to Medical Center Larkana for treatment of her sister Anila, and while returning on the motorcycle, they were waylaid by five accused including applicant, who demanded "Bhatta" of Rupees five lacs from her husband, in response to which he paid them Rs.1 lac but as he could not give the remaining amount of Rs.4 lacs, he was murdered by the accused. The allegations, i.e. demanding "Bhatta" by the accused and payment of Rupees one lac by the deceased to them, however could not be even ex-facie established, as record does not reflect that any such material was collected in the investigation. A long running enmity between the parties is admitted and on account of which registration of many F.I.Rs including the F.I.Rs

under Section 302 P.P.C against each other is also not denied. We have been also informed that the deceased himself was the accused in the murder case registered by the applicant/accused party against complainant party. In such scenario, demanding "Bhatta" from the deceased by the accused does not appeal to the common sense. Neither any financial status nor source of income of the deceased has been brought on record by the complainant to prima-facie justify allegation of "Bhatta" and insertion of Section 386 P.P.C in the F.I.R. The incident appears to be the fallout of the previous enmity and there is no evidence either to indicate that the subject incident created any sense of insecurity, fear or terror in the people of locality. The trial Court while dismissing the application under Section 23 of Anti-Terrorism Act, 1997, has failed entirely to attend to the above facts and circumstances of the case, which has resulted into miscarriage of justice. We, therefore, while relying upon dictum laid down in 2016 SCMR 1754 allow this criminal revision application. Resultantly, the application under Section 23 of Anti-Terrorism Act, 1997 is allowed and the Special Case No.03/2015 is accordingly withdrawn from the file of Anti-Terrorism Court, Larkana and transferred to the learned Sessions Judge, Larkana, with directions to either to try himself or assign it to any of the Additional Sessions Judges working under him.

JUDGE

JUDGE

Ansari/\*