ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 639 of 2022
(***Karim Bux @ Javed & others v The State)***
Criminal Misc. Application No. 640 of 2022
(***Karim Bux @ Javed & others v The State)***

Date	Order with signature of Judge

Before:-
Mr. Justice Salahuddin Panhwar
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and Order 04.11.2024

Mr. Muhammad Ashraf Samoo advocate for the applicant in both Criminal Miscellaneous Applications.
Nemo for the private respondent.
Mr. Siraj Ali Khan APG.

O R D E R

Adnan-ul-Karim Memon, J: The applicants, Karim, and four others, have challenged the Magistrate's order returning the charge sheet submitted in FIR No. 113 of 2022 under sections 147, 148, 149, 506/2, 365-B, 511, and 504 PPC of PS Gharo, District Thatta to the investigating officer with directions to refile it under the particular sections of the Anti-Terrorism Act before the Anti-Terrorism Court. An excerpt of the order is reproduced as under:-

> ***"4 Bare perusal of the above provision of law clearly suggests that whenever the extortion of money is involved by putting any person in fear of any injury, then the said action comes within the definition of the act of "terrorism and in the instant case-specific allegations of demanding the Bhatta/extortion of money has been alleged on the force of pistols, as a result of which, accused persons also attempted to kidnap the complainant and extended murderous threats. In the case of "ABDUR RAB alias ALI AKBER VS State, (2018 P. Cr. L.J Page 1313 KARACHI) the Honorable High Court of Sindh has held that Anti-Terrorism Court for taking cognizance and conducting the trial of offenses, had to make a tentative assessment with reference to allegations leveled in the FIR, the materials collected by the investigation agency and the surrounding circumstances, depicting the commission of the offense." Therefore, keeping in view the provision of the Anti-Terrorism Act, 1997, 1 am of the considered view that RO has not properly applied the relevant sections of ATA, 1997 which are clearly attracted in the instant case and are exclusively triable by the Honorable Anti-Terrorism Court.***
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> ***In the above circumstance, the concerned investigating officer I.O/SHO Police Station Gharo is directed to submit the final report before the competent court having jurisdiction. Hence, the instant charge sheet along with ice papers is hereby returned to the I.O/SHO with direction to submit the same before the Competent Court having jurisdiction."***

2. Brief facts of the prosecution case are that the complainant namely Muhammad Umar reported to the Police on September 11, 2022, with the narration that armed assailants demanded extortion money when he refused, they attempted to kidnap him. A court order prompted the lodging of the FIR on 28.09.29022 at the relevant police station. However, the

learned Magistrate opined that the allegations of extortion and attempted kidnapping under the threat of firearms constitute terrorism under the Anti-Terrorism Act of 1997. The court ordered the police to refile the case before the appropriate Anti-Terrorism Court, which action is under challenge before this court.

3. Learned counsel for the applicants argues that the trial court erred in directing the police to include Anti-Terrorism Act sections. He claims the FIR does not indicate any intent to create fear or insecurity as per the contents of the FIR and investigation carried out by the Investigating Officer and subsequent charge sheet. He alleges that the charges leveled against the applicants are false due to a land dispute between the parties and aimed to pressure the applicants. He requests this court to quash the order dated 19.10.2022 passed by the learned Civil Judge & Judicial Magistrate at Mirpur Sakro at Gharo.

4. Learned Additional PG has submitted that the SHO of Gharo Police Station submitted a final charge sheet against the applicants/ accused under Sections 147, 148, 149, 506/2, 365/511, and 504 PPC for trial. He added that the complainant is a trader, alleged that the applicants/accused demanded extortion money and attempted to kidnap him at gunpoint. He added that the incident constitutes terrorism under the Anti-Terrorism Act, 1997, specifically Sections 6(2) (e) and 6(2) (k) of the Act. He supported the trial court's order and submitted that the court's assessment and direction to the SHO to submit the final report/charge sheet to the appropriate Anti-Terrorism Court for further proceedings is a correct decision on the part of Judicial Magistrate, he lastly prayed for the dismissal of the Criminal Miscellaneous Applications.

5. We have heard the learned counsel for the parties and have perused the material available on record.

6. The principal question that arises for determination in the instant Criminal Miscellaneous Applications is whether the Magistrate is empowered to add or delete Sections of P.P.C. in the charge sheet. Whether from the ingredients of F.I.R., the offense under Sections 6(2) (e) and 6(2) (k) the Anti-Terrorism Act, 1997 is made out or not? Whether the learned Magistrate had rightly returned the police papers/charge sheet to the Investigating officer to submit before the Anti-Terrorism Court having jurisdiction for taking cognizance of the offense under the Anti-Terrorism Act, 1997?

7. Before touching on the merits of the case, it is found quite appropriate first to discuss the difference between the role of the investigating officer and that of the learned "Magistrate" in relation to the

investigation and outcome thereof. Every investigation is to be conducted as per the Criminal Procedure Code and the Police Rules. The vitality of the role of the investigating officer cannot be denied because it is the very first person, who per law, is authorized to dig out the truth which, too, without any limitation including that of the version of informant/complainant. Without saying more in that respect the authoritative view of the Supreme Court is given in the case of ***Mst. Sughran Bibi Vs. The State*** **(PLD 2018 SC-595*)***, whereby certain legal position(s) are declared. Out of which, some being relevant, are reproduced hereunder:-

> ***(iv) During the investigation conducted after the registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161 Cr.PC in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case;***
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> ***(v) During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules 1934 "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."***
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> ***(vi) ……. (vii) Upon conclusion of the investigation the report to be submitted under section 173 Cr.PC is to be based upon the actual facts discovered during the investigation irrespective of the version of 4 the incident , advanced by the first informant or any other version brought to the notice of the investigating officer by any other person.***

8. From above, it is quite clear that an investigating officer is not bound to base his conclusion on the version of the informant or defense but on 'actual facts, discovered during the course of investigation'. Such conclusion shall be submitted in the shape of a prescribed form, as required by Section 173 of the Criminal Procedure Code. At this juncture, it would be relevant to refer to the provision of Section 173 of the Criminal Procedure Code, which reads as under;

> ***"173 (1) Report of Police Officer. Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the Officer Incharge of the police station shall through the public prosecutor---.***
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> ***(a) forward to a Magistrate empowered to take cognizance of the offence on a police report, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the, persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and***

> ***(b) communicate, in such manner as may be prescribed by the Provincial Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given. (2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Provincial Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the Officer Incharge of the police station to make further investigation.***
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> ***(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit."***

9. The bare perusal of the above section would show that it directs that on conclusion of every investigation, a police report shall be forwarded to the Magistrate having jurisdiction, so empowered to take cognizance thereon which must include all details. It no-where describes as to how the Magistrate shall deal with such a report. It however empowers the Magistrate to agree or disagree with the opinion/act of the Investigating Officer in releasing an accused during investigation under section 497 Cr.PC, which, too, to the extent of discharge of bonds. Since in Cr. P.C, this Chapter no-where provides duties/powers of the Magistrate to deal with such forwarded reports, therefore, section 190 Cr. P.C thereof, being relevant, is referred to which reads as under;

> *"Section 190. Cognizance of offences by Magistrates. All Magistrates of the first class, or any other Magistrate specially empowered by the Provincial Government on the recommendation of the High Court may take cognizance of any offence;*
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> *(a) upon receiving a complaint of facts which constitute such offence.*
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> *(b) upon a report in writing of such facts made by any Police officer,*
>
> *(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion".*

10. In the above section, the word "may" has been used which always vests competence to agree or disagree with the police report under section 173 Cr. PC. This is the reason for the legally established principle of the Criminal Administration of Justice that an opinion of the investigating officer is never binding upon the Magistrate dealing with the report, forwarded under section 173 of the Criminal Procedure Code. In the case of *Muhammad Akbar v. State* **(1972 SCMR 335)**, it has been observed that; "Even on the first report alleged to have been submitted under section 173, Cr.PC, the Magistrate could, irrespective of the opinion of the Investigating Officer to the contrary, take cognizance, if upon the materials before him he found that a prima facie case was/is made out against the accused persons. After all the police is not the final arbiter of a

complaint lodged with it. It is the Court that finally determines upon the police report whether it should take cognizance or not in accordance with the provisions of section 190(i)(b) of the Code of Criminal Procedure. This view finds support from a decision of the Supreme Court in the case of *Falak Sher v. State* (**PLD 1967 SC-425**).

11. Even under the sub-section (3) of section 190 of the Criminal Procedure Code, a Magistrate who takes cognizance of any offense under any of the clauses of sub-section (1) of that section is required to apply his mind to ascertain as to whether the case is one which he is required to 'send' for trial to the Court of Session or whether it is one which he can proceed to try himself. It must always be kept in view that an act of taking cognizance has nothing to do with the guilt or innocence of the accused but only shows that the Magistrate concerned has found the case worth trying, therefore, the Magistrate should never examine the matter in deep but only to make prima facie assessment of the facts about the commission of the offense or otherwise. Once the Magistrate has taken cognizance of the offense exclusively triable by the Court of Session, he has to send the case to that Court.

12. It would further be added here that taking cognizance shall not prejudice the right of the accused but rests the burden upon the prosecution to prove its charge without any harm to the presumption of innocence of the accused involved in the offense. Even otherwise, it is by now settled that cognizance is taken against offense and not against the accused. However, at the same time, if a tentative examination of available material shows prima facie commission of a cognizable offense last justifies proceeding further with the case then a criminal case normally cannot be disposed of under ‘B’ or ‘C’ class based on the recommendation of the police and the Magistrate can direct for further investigation on the points so, found out by the Court.

13. The criminal justice system has three stages: investigation, inquiry, and trial, each stage has specific authorities and limitations. The investigating agency conducts the initial investigation, while the inquiry, Magistrate reviews the case and decides whether to take cognizance or not. The trial court, either a Magistrate's court or a Sessions Court, conducts the trial if cognizance is taken. Interference from other courts or agencies is generally not allowed during these stages, except in cases of clear legal violations or jurisdictional errors. The Special Magistrate can try all non-capital offences, but cannot sentence to more than 7 years imprisonment and a fine. If during the trial, it appears that a different, Sessions triable offense is involved, the case can be transferred to the Sessions Court. However, the investigating agency, inquiry Magistrate,

and trial court operate independently, with limited oversight. Only in cases of clear legal violations can one agency/court intervene in the actions of another. This division of authority prevents unnecessary interference between different parts of the criminal justice system, ensuring a smooth and efficient process. Any interference can lead to chaos and undermine the legal framework. On the aforesaid proposition, there is a clear decision rendered by the Supreme Court in the case of *Muhammad Ajmal and others v. The State and others* (**2018 SCMR 141**).

14. However, in the present case the investigating agency, after the investigation submitted a complete "Challan" before the Judicial Magistrate under Sections 147, 148, 149, 506/2, 365/511, and 504 PPC, which papers were returned to the investigating officer to submit before ATC Court having jurisdiction, primarily, the correct stage for addition or subtraction of Sections of PPC are sending the case to another court can only be determined at the time of framing of charge by the trial court, which has not yet been done. The learned Magistrate in the impugned order has assigned reasons for directing the Investigating Officer to add Sections 6(2) (e) and 6(2) (k) of ATC and has passed the judicial order directing him to submit the charge-sheet against the applicants before the Anti Terrorism Court though the Investigating Officer has investigated the case and his recommendation for charging the accused under Sections 147, 148, 149, 506/2, 365/511, and 504 PPC, and not under Sections 6(2) (e) and 6(2) (k) of ATC, as there was no material available with the learned Magistrate to opine that the Sections 6(2) (e) and 6(2) (k) of ATC were/are attracted as FIR is not a piece of evidence and this is just information regarding the happening of incident and it was for the Investigating Officer to unearth the truth whether subject offences were made out during investigation or otherwise as he simply recommended the case to the learned Magistrate for trial of the applicants/accused under Sections 147, 148, 149, 506/2, 365/511, and 504 PPC and not extortion to attract the jurisdiction of the Anti Terrorism Court as the learned Magistrate lacked the jurisdiction and powers to add the sections in the charge-sheet as he is not the Investigating Officer and he has only authority to agree or disagree with the recommendation of the Investigating Officer and/or to take cognizance of the offence.

15. We have noticed that the Judicial Magistrate has been conferred with wide powers to take cognizance of an offense not only when he receives information about the commission of offense from a third person but also when he has knowledge or even suspicion that the offense has been committed. The Magistrate has the power to independently review a police report, even if it concludes that no offense was committed. They can

disagree with the police's opinion and take cognizance of the offense, ordering further investigation or issuing process to the accused. The Magistrate's decision is based on their assessment of the facts, not solely on the police's opinion. The terms "charge sheet" and "final report" are not formally defined in the Code. However, they are commonly used in police rules to refer to reports filed under Section 170 Cr.P.C. Reports filed under Section 169, where there's insufficient evidence, are often termed "referred charge," "final report," or "summary."

16. In view of the above we, therefore, dispose of these Criminal Miscellaneous Applications along with the pending application(s), with direction to the trial court to proceed with the matter, frame the charge, and culminate the Criminal proceedings in its logical conclusion within a reasonable time.

17. In these circumstances the impugned order dated 19.10.2022 passed by the learned Civil Judge & Judicial Magistrate at Mirpur Sakro at Gharo is not sustainable under the law and is set aside.

18. These Criminal Miscellaneous Applications are disposed of in the above terms.

JUDGE

JUDGE

Shafi