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ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, LARKANA
Criminal Misc. Application No.D-09 of 2015

DATE ORDER WITH SIGNATURE OF JUDGE

Present:

Mr. Justice Zafar Ahmed Rajput
Mr. Justice Muhammad Iqbal Mahar

Applicants : Zahoor Ahmed & 2 others,
Through Mr. Habibullah G. Ghouri, Advocate

Respondent No.1 : The State, through Mr. Sardar Ali Shah, A.P.G.

Respondents No.2 : Abdul Razzak, through Mr. Safdar Ali Ghouri,
Advocate

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Date of Hearing: 06.09.2016
Date of Order: 06.09.2016
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ORDER

ZAFAR AHMED RAJPUT, J: - This Criminal Miscellaneous Application under section 561-A, Cr. P.C. is directed against the order dated 01-06-2015, whereby the learned Judge Anti-Terrorism Court, Larkana dismissed the Cr. Misc. application No. 10 of 2015, filed by the applicants/accused under section 23 of Anti-Terrorism Act, 1997 (hereinafter referred to as the "Act of 1997"), praying therein for the transfer of Special Case No. 18 of 2015, arisen out of F.I.R. bearing No. 55 of 2015, registered at P.S. Kambar under section 302, 324, 311, 387, 143, 149 P.P.C. r/w section 6/7 of the Act of 1997 from the Court of Anti-Terrorism, Larkana to the Court of Sessions Judge Kambar-Shahdadkot for want of jurisdiction.

2. Briefly stated facts of the case are that the respondent No.2/complainant lodged the aforementioned F.I.R. on 13.03.2015 alleging therein that he is resident of village Karam Bouk and due to construction of Indus Highway,

which passes near the village from southern side, the land grabber Tahir Mughari and others had occupied the old road, on that his cousin Mukhtiar Ali, who was serving as Deputy Director, I.B in Islamabad submitted an application to Deputy Commissioner Kambar against Tahir Mughari and his accomplices, who being annoyed issued threats of causing murder to his cousin and demanded Rs. 5,00,000/= as "Bhatta" from the villagers. It has further been alleged that on 12.03.2015 at about 11:00 a.m. the complainant, his cousin Mukhtiar Ali, Ashique Hussain, Taufail Ahmed, Niaz Hussain, Muhammad Waris and Muhammad Bux were taking tea at the hotel of their relative, namely, Ghulam Murtaza near Indus Highway when Tahir Mughari, Akber, Liaquat Munir Ahmed, Ali Muhammad Shahzor, Abdul Razak, Zahoor Ahmed, Ghulam Murtaza, Deedar Hussain and five/six unknown persons, duly armed with deadly weapons, came there and started firing upon them; however, they in retaliation also fired upon them, which resulted in death of Mukhtiar Ali, Ashique Hussain and Muhammad Bux, while Taufail Ahmed, Zahid Hussain and complaint received injuries from complainant side; whereas from the accused party Liaquat Mughari, Deedar Mughari and Ghulam Murtaza died while Shahzor, Munir Ahmed, Abdul Razak, Zahoor Ahmed and Jameel Ahmed sustained injuries.

3. After usual investigation police submitted the challan against the applicants/accused in the Court of Anti-Terrorism, Larkana, wherein the applicants filed Cr. Misc. application No. 10 of 2015, under section 23 of the Act of 1997, which was dismissed by the Trial Court, vide order dated 01.06.2015 holding that since there is allegation of demanding "Bhatta" the Court has exclusive jurisdiction to try the case. It is against this order, that the instant criminal revision application has been preferred by the applicants/accused.

4. Learned counsel for the applicant has mainly contended that the impugned order is against the facts and law as the learned trial Court failed to appreciate

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that there is also a counter version of the incident and the F.I.R. of the same was lodged by applicant Jameel Ahmed at P.S. Kambar, vide Crime No. 57/2015, against the complainant party in respect of attack launched upon applicant party and in both the F.I.Rs enmity and dispute over piece of plot and raising construction there on is admitted. He has further contended that three persons from each side lost their lives and three persons from compliant side and five persons from applicant side sustained injuries and in both the F.I.Rs sections 6 and 7 of the Act of 1997 were applied but the counter F.I.R. lodged by the applicant Jameel Ahmed against the complainant party was returned to police by the ATC Court to submit the same before the court of ordinary jurisdiction ignoring the settled principle of law that the counter cases are to be tried by one and the same court to determine the point of aggression. He has also contended that from the contents of F.I.R. and material collected by the prosecution during course of investigation, it is clear that alleged demand of Rs. 5.00.000/= was in respect of the amount of fine that has been twisted as Bhatta, hence sections 6 and 7 of the Act of 1997 do not attract under the circumstances of the case.

5. Conversely, learned counsel for the respondent/complainant has maintained that the offence with which the applicants/accused have been charged fall within the ambit of terrorism as mentioned in section 6 (2) (k) of the Act of 1997, which is exclusively triable by the Anti terrorism Court.

6. Learned A.P.G. for the State has also vehemently opposed this application and asserted that the impugned order is a legal order, which does not suffer from any illegality or irregularity requiring any interference of this Court.

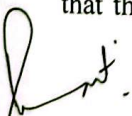
7. Heard the learned counsel for the applicants and respondent as well as learned A.P.G. for the State and perused the material available on record.



8. It would be relevant to mention here that in the case of *Muhabbat Ali and another vs. The State (2007 SCMR 142)*, the Honorable Supreme Court of Pakistan has laid down the principles to determine the act of terrorism to attract the provision of section 6 of the Act of 1997, as under:

"In order to determine as to whether an offence would fall within the ambit of section 6 of the Act, it would be essential to have a glance over the allegations made in the F.I.R., record of the case and surrounding circumstances. It is also necessary to examine that the ingredients of alleged offence has any nexus with the object of the case as contemplated under sections 6, 7 and 8 thereof. Whether the particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said Act is to be seen. It is also to be seen as to whether the said act has created a sense of fear and insecurity in the public or any section of the public or community or in any sect."

9. While examining the case in hand on the above touchstone, it is manifest on the face of it that the alleged offence took place because of previous enmity in rural area. Motive as alleged in the F.I.R. is also to be given a specific attention which indicates that there was a personal enmity between the parties over piece of land. There is no allegation of sectarian and religious issues and no threat or over awe to society or section of people or public is alleged in the case. It is an admitted fact that deceased Mukhtiar Ali though was a public servant but he was posted in Islamabad and he had come to visit his village and he was not on official duty when the alleged incident took place. There is no criminal record against the accused showing their involvement in terrorist activities or in land grabbing. The allegation regarding demanding "Bhatta" by the applicants/ accused could not be established ex-facie, as record does not reflect if any such material was collected in the investigation. Besides, it is also matter of record that the counter F.I.R. lodged by the applicant Jameel Ahmed at P.S. Kamar,



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vide Crime No. 57/2015, under section 302, 324, 311, 148, 149 PPC, read with section 6/7 of the Act of 1997 was returned back by the Judge of ATC, Larkana to police vide order dated 16.03.2015 with directions to submit the same in the ordinary Court having jurisdiction, while observing that the facts reveal from the F.I.R. that there is dispute between the complainant party and accused party over possession of government plot on lease basis and that the offence had been committed by accused in the background of dispute over leasing of government plot between the parties; therefore, the question of creating terror in the minds of general public has not arisen; hence, the alleged offence has got no nexus with the section 6 and 7 of Anti-Terrorism Act, 1997. In such scenario demanding "Bhatta" from the complainant party by the applicants/accused does not appeal to common sense.

10. For the foregoing facts and reasons, we are of the considered view that the trial Court while dismissing the application under section 23 of the Act of 1997 has failed to attend to the above facts and circumstances of the case, which has resulted into miscarriage of justice. We, therefore, by allowing this criminal ^{Misc 7} application, set aside the impugned order. Resultantly, Special Case No. 18 of 2015 is accordingly withdrawn from the file of Anti-Terrorism Court, Larkana and transferred to the learned Sessions Judge, Kambar-Shahdadkot with directions either to try himself or assign it to any of the Additional Sessions Judge working under him.

11. Above are the reasons of our short order dated 06.09.2016 whereby this criminal ^{Misc 7} application was allowed.

