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ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA  
Cr. Misc. Appln No. D- 09 of 2018.

Date \_\_\_\_\_ Order with signature of Hon'ble Judge \_\_\_\_\_

1. For orders on office objection as flag A.
2. For hearing of main case.

17.03.2020

Mr. Athar Abbas Solangi, advocate for the applicants.  
Mr. Ali Anwar Kandhro, Addl. P.G.

ORDER.

SHAMSUDDIN ABBASI-J.:-Through this criminal miscellaneous application, applicants/accused have assailed the order dated 14.9.2018 passed by learned Special Judge, Anti-Terrorism Court, Shikarpur whereby application under Section 23 of Anti-Terrorism Act, 1997 filed by the applicants/accused in Special Case No.47 of 2018 arisen out of Crime No.33 of 2018 registered at P.S City Jacobabad District Jacobabad for an offence under Sections 302, 449, 109, 34 PPC, seeking transfer of above case to a Court of ordinary jurisdiction, was dismissed.

2. Brief facts of the prosecution case giving rise to filing of instant application are that deceased Mst.Sanam had filed an application under Section 22-A (b), 6(iii) Cr.P.C seeking protection against harassment being caused by her step brothers namely Liaquat Ali and Shafqat as well as and Meeral in which notice was issued to the respondents and the matter was fixed on 02.6.2018 but she was killed at her house allegedly at the hands of respondents/accused before said date of hearing for which above FIR was lodged by SHO P.S City Jacobabad on behalf of the State.

3. During investigation, the applicants/accused Liaquat Ali and Meeral were arrested and on completion of investigation, the I.O submitted final report/challan against them in the Court of Special Judge, Anti-Terrorism Court, Shikarpur, showing accused Shafqat and three unknown accused as absconders where the applicants/accused filed Cr. Transfer Application No. 16 of 2018 in Special Case No.47 of 2018 seeking transfer of the case to ordinary Court but same was dismissed vide impugned order. Hence this application.

4. It is mainly contended by learned counsel for the applicants/accused that admittedly there was standing dispute over

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landed property between the parties and allegedly deceased Mst. Sanam was killed by her step brothers/applicants inside her own house thus it was not an act of terror but it was result of family dispute; that since the incident occurred inside the house of deceased, it can not be said that incident created any sense of insecurity or terror among people of vicinity; that initially FIR was lodged under Sections 302, 109, 449, 34 PPC which are not scheduled offences and triable by Court of ordinary criminal jurisdiction but after 18 days of registration of FIR, the complainant/Inspector Ghazanfer Ali with malafide and ulterior motives submitted further statement wherein he claimed that above incident has spread terror and panic in the people; that admittedly the complainant did not witness the incident as he reached the occurrence at the time when no private person was available hence he associated two police officials to act as mashirs, which clarify that no terror or panic was spread among people and finally; that since the ingredients of Section 6/7 ATA had not stood satisfied, cognizance taken by learned trial Court is illegal and impugned order passed by learned trial Court on the transfer application moved on behalf applicants is liable to be set aside and the case may be transferred to Court of ordinary criminal jurisdiction for trial.

5. Learned Addl. P.G duly assisted by learned counsel for the legal heirs of deceased/complainant party submits that the legal heirs/complainant party have recorded their no objection for grant of instant application on the ground that provisions of Anti-Terrorism Act, 1997 do not attract in the instant matter as the alleged incident had taken place inside the house of deceased Mst. Sanam and it was result of family dispute.

6. Heard learned counsel for the parties and perused the material brought on record.

7. It appears that in the background of previous landed dispute between the parties, allegedly Mst. Sanam was killed inside her own house by her step brothers and the FIR was lodged by Inspector Ghazanfer Ali on behalf of the State who had received information regarding incident while he alongwith subordinate staff was on patrol duty on which he rushed to the pointed place and recovered dead body of Mst. Sanam lying inside her house; she received firearm injuries on her chest and thigh and due to non-available of private persons at the site, the Investigating officer associated police officials as mashirs, which shows that incident did not spread any terror or

panic among people nor did it create a sense of fear or insecurity in society but it was only result of private vendetta

8. The provision of subsections (1), (2) and (3) of section 6 of the Anti-Terrorism Act, 1997 read as follows:

"6 **Terrorism**. – (1) In this Act, "terrorism" means the use or threat of action where

(a) the action falls within the meaning of subsection (2), and

(b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or

(c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson, or by any other means, government officials, installations, security forces or law enforcement agencies:

Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.

(2) An "action" shall fall within the meaning of subsection (1), if it: -----

(3) The use or threat of any action falling within subsection (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not subsection (1) (c) is satisfied.

9. AT this juncture, we would like to take advantage of a case of Ghulam Hussain v. The State and others (PLD 2020 Supreme Court 61) whereby Hon'ble apex Court has held as under:

"It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions specified in subsection (2) of Section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta."

In view of above, the cognizance taken by learned trial Court under Sections 6/7 of Anti-Terrorism Act, 1997 is illegal and unwarranted as the case is to be tried by the Court of ordinary criminal jurisdiction. Accordingly instant application is allowed. Impugned order

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is set aside. Learned Judge Anti-Terrorism Court, Hyderabad, where the case is pending presently, is directed to return the case papers to the I.O concerned for presenting the same before the competent Court of ordinary criminal jurisdiction.

  
JUDGE

  
7.02.2020  
JUDGE

shabir