IN THE HIGH COURT OF SINDH
Circuit Court at Larkana

Crl. Misc. App. D-09 of 2016

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Omar Sial

Rasool Bux Shar. **vs** **The State and others**

Date of hearing: 10.08.2017.
Date of order: 31.08.2017.

Mr. Ashfaque Hussain Abro, Advocate for the Applicants.
Mr. Khadim Hussain Khoharo, Addl. P.G for the State.

ORDER

Omar Sial, J. The Applicant has impugned an order dated 03.6.2016 passed by the learned Anti-Terrorism Court, Shikarpur in crime No.23 of 2016 registered under Sections 365-A and 302 PPC read with Sections 6 and 7 of the Anti-Terrorism Act, 1997, whereby FIR in question has been returned to the SHO with directions to submit the same before the Court having jurisdiction.

2. Relevant facts of the case at hand are that on 02.6.2016, one Rasool Bux Shar lodged a report at the P.S. Sultan Kot stating therein that the previous day i.e. 1-6-2016 while he was sitting at a bus stop with his brother Rahim Bux and two others, the accused who were seven in number and were all armed came and forcibly took away his brother Rahim Bux in a car after saying that he will be released upon the payment of a Rs. 200,000 ransom. The complainant party followed the accused persons and saw that when the accused reached the Sui Gas plant they took Rahim Bux off the car and all seven accused then fired at Rahim Bux with their weapons and consequently killed him. Upon this report, FIR bearing No. 23 of 2016 was registered at P.S. Sultan Kot.

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3. On 3-6-2016, the SHO P.S. Sultan Kot submitted the FIR in the learned Anti-Terrorism Court, Shikarpur where the learned Judge declined to accept the FIR and passed the impugned order ordering that the FIR be taken to a court of ordinary jurisdiction. The only ground that the learned Judge based the impugned order was that there was *"nothing in the entire FIR that any ransom amount was paid by the complainant party to accused for release of abductee."*

4. We have heard the learned counsel for the Applicants as well as the learned APG. The Respondents remained absent despite notice. We have also perused the available record. The APG has supported the arguments of the counsel for the Applicant. Our observations are as follows.

5. Section 23 of the Anti-Terrorism Act, 1997 provides for the powers of an Anti-Terrorism Court to transfer cases to courts of ordinary jurisdiction. For ease of reference, the said section is reproduced below:

> ***23. Power to transfer cases to regular courts.*** *Where, after taking cognizance of an offence, an Anti-Terrorism Court is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any Court having jurisdiction under the Code, and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.* (underlining is ours).

6. A bare reading of the said section would show that an Anti-Terrorism Court can exercise its power to transfer cases only after it has taken cognizance of the offence. In the case at hand, the learned Judge has pre-maturely and somewhat arbitrarily given his opinion that he did not believe the allegations in the FIR, which opinion was based solely on the contents of the FIR and well before the investigating officer had an opportunity to investigate the crime or file his report u/s 173 Cr.P.C. We would also like to observe that the learned Judge has erred in his opinion that if ransom is demanded but not paid, such fact would take a case out from the ambit of the terrorism law. Whether an offence falls within the

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ambit of the terrorism law has to be decided after forming an opinion whether the provisions of section 6 and 7 of the Anti-Terrorism Act, 1997 are satisfied in that crime. Whether a particular act was an act of terrorism or not, the motivation, object, design or purpose behind such act had to be seen. We have intentionally restrained ourselves from making any further observations so as not to prejudice the case of any of the parties at this stage.In fact the learned Judge has passed the impugned order on 3-6-2016, whereas the F.I.R was lodged on 2-6-2016 and must have been placed before the Court either on 2-6-2016 or 3-6-2016, and on the same date an opinion was formed, which in our opinion does not seems to be appropriate. The learned Judge ought to have waited for filing of an interim report or final report, as the case may be, or for an application by the accused for transfer of case and not transferred the case immediately on receiving the F.I.R. A learned Division Bench of this Court in the case of *Hassan and 2 others v. The State(PLD 2015 Sindh 250)* has dealt with the object and intent of F.I.R and its scope viz.a.viz Sections 154 & 173 Cr.P.C. and has been pleased to hold that the object of the F.I.R was always to bring the law into motion and it is not the F.I.R alone on the basis whereof one is arraigned. The relevant observations are as under:

> *"Here, it is worth to add that object of an F.I.R is always to bring the law into motion and it is not the F.I.R alone on the basis whereof one is arraigned but it is the investigation material which determines the charge or disposal of case/ crime otherwise. Moreover, the F.I.R is lodged/ recorded by the Incharge Police Station is on narration given by the informant while the charge sheet/ challan is submitted with reference to outcome of the investigation. It is not always necessary that if an F.I.R has been lodged/ recorded for a particular offence the challan/ charge sheet should also be submitted for same offence else the purpose of investigation shall stand frustrated. The investigation officer is competent to add or delete the section(s) in the charge sheet/ challan which, however, shall be open to scrutiny by the Court of law, taking cognizance. If in result of the investigation a single F.I.R results in constituting two different offence(s) and each offence has been shown to be triable by a different Court of*

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law, as categorized by section 6 of the Criminal Procedure Code or any other-law covering to such offence, then sending up one before different Court(s) of law cannot be said to be illegal only on the plea that root(s) of all are one and same i.e. an F.I.R else the scheme and object of Schedule-II of the Code shall stand frustrated. The essentials of a challan produced by the police before the trial Court include a description of the offence committed; production of the accused before the Court and the evidence/ witness to prove the offence. Trial Court can commence the trial only when all these three are produced before it."

7. In view of the above, the impugned order is set aside and the Anti-Terrorism Court, Shikarpur is directed to decide the matter afresh after taking into account the provisions of section 6 and 7 of the Anti-Terrorism Act, 1997, the contents of the FIR, the act of the accused, witness statements and all other surrounding circumstances of the crime while also keeping in mind the decisions of the Hon'ble Supreme Court in ***Kashif Ali vs The Judge, Anti-Terrorism Court No. II, Lahore and others*** **(PLD 2016 Supreme Court 951)** as well as the still unreported judgment of the apex Court dated 04.5.2017 in ***Waris Ali and others vs The State*** **(Criminal Appeal No. 104 of 2010)**.

JUDGE

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31.8.17

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