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IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Mohammad Karim Khan Agha

Cr. Rev. Application No.D-22 of 2018.

Nazar Muhammad and another

Vs.

The State.

Applicants Muhammad and Behram Khan:	Nazar	Through Mr. Afzal Karim Virk, Advocate
Respondent : The State		Through Mr. Shahzado Saleem Nahyoon, Deputy Prosecutor General
Date of hearing :		10.09.2018
Date of judgment :		10.09.2018

**J U D G M E N T**

**MOHAMMAD KARIM KHAN AGHA, J.-** This criminal revision application has been filed by the applicants against the order dated 06.08.2018, passed by the learned Judge, Court of Anti-Terrorism at Mirpurkhas, whereby, an application u/s 23 of Anti-Terrorism Act, 1997, moved by the applicants in Special Case No.02 of 2018 (Re-The State V Nazar Muhammad & others) for transfer of the said case to an ordinary Court, was dismissed (the impugned order).

2. Precisely, the brief facts of the prosecution case as disclosed in the FIR which was lodged at police station Mithi by complainant Kelash are that on 05.01.2018 he along with Deepak and Ashouk Kumar left their houses at about 0800 hours for their work for Naukot, when they reached at Pakistan Bazar near Thar Press Club at about 0815 hours near the shop of Chandar, they saw that Chandar was sitting inside the shop and Dileep was busy in cleaning of his shop, in the meanwhile, a black colour CD 125 motorcycle on which two persons were sitting whose faces were open came there, another person who was standing near the shop stopped persons who came on CD 125 motorcycle and pointed the shop of Chandar and went away. Thereafter both accused persons took out pistols from the folds of their shalwars and



went in the shop of Chandar, one of them pointed his pistol at Chandar and asked him to give Thelli containing cash amount, Chandar did not give the same, on which that accused forcibly snatched Thelli from Chandar, on resistance that accused made straight fire shot from his pistol upon Chandar which hit him, he fell down on the ground, then other accused took Thelli containing cash amount and came out from the shop, then both accused pointed their pistols upon complainant Kelash, P.Ws Deepak, Ashouk Kumar and Dileep and asked them not to come near them, due to fear complainant Kelash, PWs Ashouk and Deepak did not go near the accused persons but Dileep raised cries and followed the accused persons, on which one accused made straight fire shot on Dileep, who fell down on the ground, then both accused persons after making indiscriminate firing and creating fear, terror and insecurity in the area went away on same motorcycle towards western side of Raja Guest House Street. Complainant informed the incident to Police on phone, then he and PWs took both injured Chandar and Dileep to Civil Hospital Mithi where they succumbed to injuries. Complainant further stated in the F.I.R. that he and the PWs had clearly seen the accused persons and they can identify them if they see them again

3. After usual investigation, challan of the case was submitted before the concerned Court which was the Anti Terrorism Court. During trial, accused / applicants have moved an application under section 23 of Anti-Terrorism Act, 1997 (ATA) for transfer of the instant case from the Anti Terrorism Court to an ordinary Court, which was dismissed through the impugned order, hence this criminal revision application.

4. Mr. Afzal Karim Virk, learned counsel for the applicants contended that the order passed by the learned trial court is perverse and the reasons are artificial; that in the F.I.R. it is mentioned that unknown accused persons during robbery committed murder at about 08.00 a.m. on 05.01.2018, but no person was attracted to the place of vardat at the time of incident, therefore, question of spreading terror and insecurity amongst the general public does not arise; that for the purpose of attracting provisions of ATA, it is necessary that accused persons have committed the offence with sole object of spreading terror, insecurity and panic amongst the general public, but all these ingredients for the purpose of attracting the ATA are missing in the present case; that in the F.I.R. sections 6/7 of ATA should have been inserted only when the object of committing the alleged offence in the minds of the culprits was to spread terror and insecurity in the locality and mere



heinousness of the offence may not bring the offence within the provisions of ATA; that it is also necessary for the purpose of bringing the offence within the proviso of ATA that the incident has been designed in the manner which is sufficient that act of accused persons had terrorized general public or any sect of public, which is lacking in the instant case; that as per F.I.R. the accused persons went to commit robbery and on resistance committed murder of two persons, they have no prior intention to create fear, terror, insecurity amongst the public of the area and the sections 6/7 of ATA are misapplied. Lastly, he submitted that the case may be sent to the ordinary Court having jurisdiction for trial. In support of his contention, learned counsel for the applicants relied upon the case of **Ishaq Ali V The State and 2 others** (2013 PCr.LJ 1808).

5. On the other hand learned Deputy Prosecutor General Sindh while supporting the impugned order passed by learned trial court argued that the impugned order has been passed after due appreciation of the facts as well as the circumstances in which the offence has allegedly been committed and that it should be upheld as it was an act of terrorism which attracted the ATA.

6. We have heard the learned counsel for the parties and perused the material brought on record alongwith the impugned order and the relevant law with the able assistance of the parties.

7. In our view this case falls within the purview of the ATA for the following reasons; that there was a plan by the applicants to rob Mr. Chandar at his shop with firearms; that the robbery took place in broad day light; that the robbery took place in a bazar where members of the public were present; that when Mr. Chandar resisted the robbery he was shot in cold blood in front of members of the public; when other members of the public tried to intervene they were warned off by the applicants threatening them with pistols in front of the public; one person Dileep who did try to intervene was again shot dead in cold blood by the applicants in front of members of the public; that whilst making their escape good the applicants deliberately made aerial firing in order to scare off and terrorize the public and in particular the minority community to whom the victims belonged. In this respect reliance is placed on the case of **Kashif Ali V The Judge Anti terrorism court II** (PLD 2016 SC 951) where a 5 member bench of the Supreme court at P.957 Para 12 held as under;



"12. The term "design" now used in Section 6 of the Act has widened the scope of the Act and the terms "intention" and "motive" previously used have been substituted with the sole object that if the act is designed to create a sense of fear or insecurity in society, then the Anti-Terrorism Court will have the jurisdiction. From the above definition of the term "design" it is clear that it means a plan or scheme conceived in mind and intended for subsequent execution. In order to determine whether an offence falls within the ambit of Section 6 of the Act, **it would be essential to have a glance over the allegations leveled in the F.I.R, the material collected by the investigating agency and the surrounding circumstances, depicting the commission of offence.** Whether a particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said Act has to be seen. **The term "design", which has given a wider scope to the jurisdiction of the Anti-terrorism Courts excludes the intent or motive of the accused. In other words, the motive and intent have lost their relevance in a case under Section 6(2) of the Act. What is essential to attract the mischief of this Section is the object for which the act is designed.**"(bold added)

8. This incident was also widely publicized in both the print, electronic and social media and as such in our view would not only have terrorized persons in Mithi who were present at the Bazar (which remained closed for 3 days after the incident) but also those members of the general public who lived in and around Mithi. In this respect in the case of **Najam Un Nisa V Judge Special Court constituted under the ATA** (2003 SCMR 1323) it was held as under by the Supreme Court at P.1324 Para 3 as under:

"3. The venue of the commission of a crime; the time of occurrence; the motive which had led to the commission of a crime and the fact whether the said crime had or had not been witnessed by the public at large are not the only factors determining the issue whether a case did or did not fall within the parameters of the ATA of 1997. **The crucial question is whether the said crime had or had not the effect of striking terror or creating a sense of fear and insecurity in the people or any section of the people. Needless to mention here that a crime of the kind in hand committed even in a remote corner does not remain unnoticed in the area in which it is committed or even in the country on account of the print and electronic media.** Seven persons being butchered in a house at night is not the kind of occurrence which would not create terror and horror in the people or any section of the people." (bold added)

9. For what has been discussed above, we are of the considered view that the impugned order is based upon valid and sound reasons and is entirely in consonance with the provisions of the relevant law and the applicants have not been able to point out any legal infirmity in the same as in our view an act of terrorism was carried out by the applicants during the robbery, the murders and aerial firing which followed which falls within the



purview of the ATA and thus the trial court through the impugned order has rightly dismissed the applicants criminal transfer applications.

10. Thus the applications are dismissed. These are the reasons for our short order announced in open court today which reads as under:

"Parties advocates have been heard. They have concluded their arguments. For the reasons to be recorded later on this Cr. Rev. Application is dismissed with direction to the trial Court to proceed with the case expeditiously and decide the same within a period of two months after receipt of this order and no unnecessary adjournments shall be granted to either party.

Office is directed to send copy of this order to the trial Court for information and compliance."