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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Criminal Misc. Application No.S-11 of 2025

Irshad Ali Memon
V/S

The State

Applicant: Through Mr. Abdul Khaliq Kalhoro,
Advocate.

Complainant: Habibullah, present in person.

State: Through Mr. Ali Anwar Kandhro, Additional
Prosecutor General, Sindh.

Date of Hearing: 10.02.2025

Date of Decision: 07.02.2025

ORDER

Omar Sial, J.- F.I.R. No. 164 of 2023 was registered on 28.11.2023 under sections 365, 343, and 34 P.P.C. at the Hyderi police station. The complainant was Habibullah, and the F.I.R. was registered against unknown persons for having kidnapped his brother Abdullah. Irshad Ali, the applicant herein, was nominated as accused when the kidnapped brother returned home. The learned 5th Judicial Magistrate accepted the plan presented. The charge was also framed for an offense under section 34 P.P.C. When the trial commenced, the first prosecution witness, the complainant Habibullah, in his examination-in-chief, mentioned that the kidnappers had sought ransom from him during the period Abdullah was kidnapped and when he returned home. Admittedly, the ransom was never given, and Abdullah returned home without payment. The learned Magistrate was, however, of the opinion that as the complainant had mentioned the ransom demand, he had lost jurisdiction and thus ordered that the case be transferred to an Anti-Terrorism Court.

2. Section 347 of the Code of Criminal Procedure, 1898 stipulates that if in any trial before a Magistrate before signing the judgment, it appears to him at any stage of the proceedings that the case ought to be tried by the Court of Session or High Court, he shall send the case to the Court of Session or High Court for trial. The powers contained in section 347 are relatively broad and unfettered. They can be implemented at any stage of the proceeding, and "it

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should appear" to the Magistrate that the case is one where the jurisdiction lies with the Sessions or the High Court. Terrorism courts are not covered as the Code pertains to the year 1898. However, the logic will apply to Special Courts as well.

3. While empowered to transfer the case, the learned Magistrate has exercised his power prematurely. Even if the case was one of kidnapping for ransom (falling within section 6(2)(e) of the Anti-Terrorism Act, 1997), that would not ipso facto mean that the case is one of terrorism and that it must be tried by an Anti-Terrorism Court. For an action to fall within the ambit of the terrorism legislation, it is also essential to show that terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997, the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act. No material has been brought to my attention that would indicate that the requirements mentioned above were satisfied.

4. As this Court does not have the requisite documents available, it would be appropriate if the impugned order were set aside and the learned trial court passed a speaking order after hearing all parties on whether the trial court has jurisdiction. The learned trial court will no doubt take into account the contents of the challan and the witness statements recorded. It shall also ensure that a dishonest improvement has not been made.

The application is disposed of under the above terms.


JUDGE 7/3/25

Manzoor