

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Revision Application No.225 of 2012

Date Order with signature(s) of Judge(s)

For katcha peshi.

31.01.2013

Mr. Jan Muhammad Naich, Advocate for Applicants

Mr. Muntazir Mehdi, A.P.G. along with Inspector Athar Malik.

Through this criminal revision application applicants/accused have impugned order dated 01.10.2012 passed by learned Special Judge Anti-Terrorism Court No.II, Karachi in Special Case Nos.B-91/2012, whereby transfer application was dismissed.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 30.04.2012 SHO/SI Abdul Sattar Abro of P.S. SIU Karachi received spy information that notorious dacoits Shahid alongwith his companions was present at Lyari arera, on

such information, SHO alongwith other police party, left the police station with official arms and ammunities and proceeded to Ilyas Goth, Liaquatabad Karachi. At 0500 hours, SHO encircled the building where notorious dacoits were hiding themselves. As soon as accused came to know about the police, they fired upon the police party with intention to kill and deterred them from discharging their official duties, police party also fired in self defence. Police encircled the accused and compelled them to surrender. Thereafter, it is alleged that accused Muhammad Nadeem, Muhammad Ashraf, Abdul Rahim, Asif Qudus, Wali Muhammad, Zahid, Ghulam Mustafa, Qaiser Baloch and Muhammas Arslan were caught hold by the police and from their possession automatic weapons without licenses/permits were recovered. During firing it is stated that accused Muhammad Naeem, Muhammad Ashraf and Asif Qudus sustained injuries.

3. FIR of the incident was lodged by SHO Abdul Sattar Abro vide Crime No.217/2012 at CIA Police Station.

4. During investigation from the place of wardat two empties of KK, 6 empties of 30 bore pistol, 4 empties of repeater and two grenade shells were recovered.

5. After usual investigation challan was submitted against accused Qaiser Baloch and others under sections 324, 353, 186, 34 PPC read with section 7 of the Anti-Terrorism Act, 1997.

6. Applicants/accused submitted an application under section 23 of the Anti-Terrorism Act, 1997 before the learned Anti-Terrorism Court No.II, Karachi, the same was rejected vide order dated 01.10.2012, while observing as under:

“In terrorism it is not essential that police party received injuries but it is enough if they are intimidated to do their public duty and refrain them from discharging their lawful duties. According to the memo of recovery mentioned weapons were recovered from them and mentioned empties were recovered from the scene of crime which implicates them of committing violence against police fore in discharging their duties which is essential ingredients of Section (m)(n) of subjection (2) of section 6 of the Anti-Terrorism Act, 1997, as such, I reject the application.”

7. Learned counsel for the applicants/accused mainly argued that despite firing with sophisticated weapons from both sides no police official has received injuries, no case triable by Anti-Terrorism Court is made out and the trial before the Anti-Terrorism Court would be *coram-non-judice*.

8. Learned A.P.G. appearing on behalf of the State supported the impugned order and argued that the applicants/accused had fired upon the police party with automatic weapons and deterred them from discharging their official duties. He further argued that from the place of wardat empties of automatic weapons have been recovered and the offence is exclusively triable by the Anti-Terrorism Court.

9. We have carefully perused the contents of the FIR, 161 statements of the prosecution witnesses, mashirnama of the place of wardat and other material collected by the investigation officer during the investigation.

10 The record reflects that applicants/accused had fired upon the police party and deterred them from discharging their official duties. From the place of wardat empties of automatic weapons used by the accused have been recovered. The act of applicants/accused clearly shows the serious violence against the members of police force and accused created terror by such act in the area. Offence clearly falls under section 6(n) of the Anti-Terrorism Act, 1997. Reliance can be placed upon the case of Nadim But Vs. Special Court Anti Terrorism Lahore and others (2000 SCMR 1086). Therefore, on the basis of material available on record learned trial court has rightly rejected the transfer application.

11. For the above stated reasons, criminal revision application is dismissed with directions to the trial court to proceed with the case expeditiously.

JUDGE

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