

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT HYDERABAD**

Present

Mr. Justice Naimatullah Phulpoto
 Mr. Justice Mohammad Karim Khan Agha

Cr. Rev. Appl. No.D-06 of 2017

DATE ORDER WITH SIGNATURE OF JUDGES

1. For katcha peshi.
2. For hearing of M.A-1583 of 2017.

Date of hearing: 09.05.2017.

Date of order: 09.05.2017.

Mr. Muhammad Hashim Leghari, Advocate for applicants.

Syed Meeral Shah, D.P.G. for the State.

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MOHAMMAD KARIM KHAN AGHA, J. -Through instant criminal revision application, applicants / accused have challenged the order dated 07.02.2017 passed by learned Judge Anti-Terrorism Court, Mirpurkhas in A.T.C. Case No.01/2017, whereby the application filed by applicants / accused u/s 23-A of Anti-Terrorism Act, 1997(ATA) for transfer of cases bearing Special Case Nos.01, 02 and 03 of 2017 from the ATC to the ordinary trial court was dismissed (the impugned order). Hence, the instant criminal revision application.

2. The brief facts of the prosecution case as per FIR lodged by the complainant PC Fayaz Ahmed on behalf of the State are that upon complaints received from Irrigation Department regarding theft of irrigation water by different khatedars / peoples and also providing / supplying irrigation water on payment of Bhatta by the accused persons on the request of Irrigation Authorities higher



police officials established a Police Picket at 12 Mile Regulator / 6 Dari Mori where the complainant PC Fayaz Ahmed of PS Kunri, PC Muhammad Ismail of PS Samaro and PC Ghulam Mustafa of PS Bodar Farm were deputed. On 29.12.2016 the said constables were present on their duty at Police Picket when at 09:30 a.m. all male accused persons made conspiracy in order to forcibly open the regulator of Asabo Shakh in furtherance of their common object duly armed with Guns, Repeater, Pistols, Hatchets and Lathies came in a white colour Corolla Car No.BGV-835, a Mehran Car No.AYA-840 and a Tractor Trolley and formed an unlawful assembly and started straight firing on police personnel with intention to kill and told them that today they will forcibly open the closed regulator of Asabo Shakh on which police personnel restrained them and informed them that it is an illegal act on which the accused persons threatened that if they (police personnel) resisted they will kill them (police personnel). Thereafter the accused persons on gun point took all three police constables with them and confined them in a room situated near the regulator of Asabo Minor, where on the pointation of weapons they robbed official SMG Rifle and mobile phone from PC Fayaz Ahmed and mobile phone from PC Ghulam Mustafa and locked them in a room. After some time the accused Bukhshan and Punhal Bheel came alongwith two lady accused by the names Sht: Seeta alias Juti and Sht: Gulabi to whom they asked to embrace the said police officials which the ladies did while the accused persons recorded video of police officials and the ladies in their mobile phone and informed them (police officials) that the same will be used by them (accused) in order to harass and blackmail the said police officials in the future. It is alleged that aforementioned accused persons used to sell the irrigation / government water to nearby zamindars by extorting Bhatta from them. Thereafter, accused persons went away and PC Muhammad Ismail through his mobile phone informed such facts to high officers and by taking advantage all police personnel came out from the said room. Thereafter, the F.I.R. was registered.

3. Learned counsel for the applicants/ accused has argued that the case of the applicants does not fall within the ambit of the ATA



He further argued that according to the F.I.R. the allegations against the applicants is that on the day of incident applicants / accused came at the scene, made straight firing upon the police party; on the pointation of weapons took and confined them in a room; made their illicit movie in their mobiles by involving the lady accused in order to blackmail the police officials so that they may continue to supply government irrigation water to nearby zamindars after demanding Bhatta and that the whole FIR was bogus and even otherwise there was no evidence of any terror or sense of fear and insecurity being created in society so as to bring the case within the ambit of the ATA and as such the case should be transferred from the ATC to the ordinary trial courts.

4. In support of his contentions, learned counsel for the applicants / accused placed reliance on the cases of **Younas v. The State** (2014 PCr.LJ 1062), **Liaquat Ali and 2 others v. Special Judge, Anti-Terrorism Court No.1, Gujranwala and 3 others** (2007 YLR 1222), **Gul Muhammad and another v. The State** (2013 PCr.LJ 52), **Jahangir Akhtar Awan and 2 others v. The State and 8 others** (PLD 2000 Karachi 89) and **Ghulam Sarwar v. The State** (2013 YLR 1135).

5. Learned Deputy Prosecutor General (DPG) initially supported the impugned order and stated that the case fell squarely within the ambit of the ATA as the actions of the accused met the requirements of S.6(2) (n) and (m) of the ATA which concern (m) serious coercion and intimidation of a public servant in order to force him to discharge or refrain from discharging his lawful duties and (n) concerns serious violence against a member of the police force, armed forces or civil armed forces or a public servant. However when questioned whether the acts of the accused also met the requirements of Sub section 6 (b) or (c) of the ATA the learned DPG very fairly agreed that they did not and as such conceded that the actions of the accused did not fall within the purview of the ATA.

6. We have considered the arguments of learned counsel, perused the record and the case law cited by them at the bar



7. Since this Revision Application in essence challenges the impugned order not to transfer this case from the ATC to the ordinary court of law we intend to restrict ourselves to the basic point whether as a matter of law based on the facts and circumstances of the case the actions of the accused brought their case within the ambit of the ATC.

8. In order for an act to come within the purview of the ATC 2 basic requirements need to be met under S.6 of the ATA.

(a) Firstly the act must fall within the meaning of any of the sub clauses set out in S.6 (2) of the ATA. Based on the facts and circumstances of this case it is extremely likely as alluded to earlier by the learned DPG that the acts of the accused fall at least within S.6 (2) (n) and (m) ATA **and**

(b) Secondly the act must also **either** fall within S.6 (1) (b) **or** (c) of the ATA which are set out below for ease of reference.

(a) 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 a foreign government or population or an international organization or create a sense of fear or insecurity in society; **or**

(b) 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.

9. This position was affirmed by the Hon'ble Supreme Court in the case of **Shahbaz Khan V Special Judge Anti Terrorism Court, Lahore** (PLD SC 2016 1) where it was held as under at P.6.

"7. It is clear from a textual reading of Section 6 of ATA that an action categorized in subsection (2) thereof constitutes the offence of terrorism when according to Section 6(1)(b) *ibid* it is "designed" to, inter alia, intimidate or overawe the public or to create a sense of fear or insecurity in society. **Therefore, the three ingredients of the offence of terrorism under Section 6(1) (a) and (b) of ATA are firstly, taking of action specified in Section 6(2) of ATA, secondly, that action is committed with design, intention and mens rea; and thirdly, it has the impact of causing**



intimidation, awe, fear and insecurity in the public or society. (bold added)

10. Thus, turning to the particular facts and circumstances of this case it appears that the act against the police officials took place in two separate areas. Firstly, at the picket where they were allegedly directly fired upon by the accused which admittedly is a secluded area which is not surrounded by any member of the public. Thus, in our view there is no evidence to suggest that this action was taken with any design, intention and mens rea of causing terrorism and since it was a secluded area it did not have the impact of causing intimidation, awe, fear and insecurity in the public or society since there were no members of the public around this secluded spot to witness or even hear the action.

11. The second aspect of the case was when the police officials were confined in a room and where they were made to be photographed in the company of some ladies. Again this incident took place in a closed room so the same considerations as to the attack on them apply vis a vis the applicability of the Anti-Terrorism Act, 1997.

12. Although the actions against the police are of a very serious nature and must be discouraged and thus dealt with by an iron hand as in effect they are attacks on society as a whole such attacks can only be dealt with under the relevant and applicable law.

13. In this case in our view it is quite apparent that based on the facts and circumstances of this particular case that the actions allegedly taken by the accused against the police do **not** fall within the ambit of the ATA since the material/evidence which we have briefly considered does **not** meet the requirements of S.6 (1) (b) or (C) ATA which are lacking in all respects.

14. Thus, this criminal revision application is allowed and special case No.1 of 2017 State v Bakshan and others pending before learned Judge ATC Mirpurkhas Division Mirpurkhas is ordered to be transferred with immediate effect to the competent court of jurisdiction for disposal in accordance with law.

15. These are the reasons for our short order of even date.

Hyderabad.
Date: 09.05.2017

