

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha  
Justice Mrs. Kausar Sultana.

**CR. REVISION APPLICATION NO.126 OF 2020**

Applicants	1 Ali Nawaz s/o Muhammad Abdullah 2 Muhammad Abdullah s/o Muhammad Khan 3 Abdul Razaque s/o Muhammad Abdullah 4. Ali Shair s/o Muhammad Abdullah 5 Shahnawaz s/o Muhammad Abdullah 6 Ghulam Mustafa s/o. Muhammad Abdullah Through Mr Waqarullah Korejo, Advocate
Respondents/State	Through Mr. Khadim Hussain Khuharo, Addl. Prosecutor General
Dates of hearing	19.11.2020
Date of announcement	19.11.2020.

### J U D G M E N T

**Mohammad Karim Khan Agha, J.-** Applicants 1) Ali Nawaz s/o Muhammad Abdullah 2) Muhammad Abdullah s/o Muhammad Khan 3) Abdul Razaque s/o Muhammad Abdullah 4) Ali Shair s/o Muhammad Abdullah 5) Shahnawaz s/o Muhammad Abdullah and 6) Ghulam Mustafa s/o. Muhammad Abdullah have filed this criminal revision application impugning order dated 29.07.2020 passed by the Anti Terrorism Court No.XV, Karachi in Special Case No.17 of 2020 arising out of FIR No 231 of 2017 under Section 385/386/34 PPC r/w 7 ATA registered at PS Zaman Town, Karachi whereby their application under S.23 ATA 1997 to transfer the case to an ordinary court as opposed to it being heard by an ATC was dismissed

2 The brief facts of the case as per FIR are that on 18.04.2017, ASI Ali Gohar Abbass, posted at PS Zaman Town Karachi submitted reply to criminal miscellaneous petition bearing No 538/2017, filed by Ashique Chandio s/o Ghulam Muhammad, before the Honourable Court of District & Sessions Judge (East) Karachi. The Honourable Judge orally directed to ASI to lodge statement

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under section 154 Cr.P.C of complainant Ashique Ali Chandio. The statement of the complainant was recorded under section 154 Cr.P.C. within the court room and the statement is as under:-

"On 18.04.2017 at about 1510 hours, in the court of Honorable District and Sessions Judge, Ashique Ali s/o Ghulam Muhammad, resident of House No.3, Street No.3, Mohalla Chakra Godh, Korangi No.1 Karachi, Mobile No.0305-3501650, CNIC No.42201-0225121-9 informed me that he is residing at the above said address and the owner of an estate agency named Bismillah. On 02.04.2017 on Tuesday at about 1700 hours, accused Abdullah Korejo s/o Muhammad Khan, Ali Nawaz s/o. Abdullah, Shahnawaz s/o. Abdullah, Abdul Razaque s/o Abdullah, Ghulam Mustafa alias Kala s/o Abdullah, Ali Shair s/o. Abdullah, Imran, Ashique Baloch, Sikander and two unknown persons, to whom I can identify when I see them, came into my office which is situated at plot No.1209, Street No.1, Bismillah Estate Agency, Gulshan-e-Ahmed, Chakra Godh, Korangi No.1, Karachi. By showing Kalashnikov and other weapons they demanded bhatta of Rs.20,00,000/- and on refusal, they threaten my life. They told me that if I do not give them bhatta, they will kill me and my family. Abdullah Korejo returned back while giving me threats for bearing dire consequences. They came for demanding bhatta in black Parado registration No. BC-9293 and Black Corolla which was parked at some distance. As the other cases were also registered against them and the residence of the locality also moved the applications against them. **They have also collected bhatta of Rs.100,000/- and Rs.500,000/- respectively from me. Due to my business, I remained silent.** Now I cannot arrange such a huge amount of rupees twenty lacs and the lives of my family are at risk. I may be given protection and FIR may also be lodged against them. The case has been registered and investigation in charge will investigate the matter. Copies of FIR will be distributed according to law".

3. The investigation Officer of PS Zaman Town, Karachi submitted the report under Section 168 Cr.P.C. before the Senior Superintendent of Police Investigation-III Korangi for the permission to dispose of crime/FIR No.231/2017 under 'B' class case which was allowed by the SSP Zone-III Investigation for further submission before DPP for its final opinion.

4. That on 05.03.2018, I.O submitted another copy of charge sheet No.69/2018 in same FIR and submitted before the Honourable Judge of High Court of Sindh / Administrative Judge of Anti-Terrorism Courts for order. The challan was accepted and then transferred to learn Court of ATC IX Karachi for its disposal in accordance with law. Investigation Officer mentioned the name of all accused in the challan except Ashique and Sikander whose names were deleted on the statement of the complainant without mentioning any reason.



5. Learned counsel for the applicants has submitted that this case does not fall within the purview of the ATA 1997 as there was no design or intent or motive by any of the accused to create fear among the public at the time when they allegedly carried out the offenses for which they have been charged and as such the impugned order should be set aside and this case sent for trial before the ordinary criminal courts. In support of his contentions he has placed reliance on **Ghulam Hussain V State** (PLD 2020 SC 61).

6. On the other hand learned APG has fully supported the impugned order and has contended that the offenses for which the applicants have been charged fall within the purview of the ATA and as such the transfer application should be dismissed.

7. We have heard the parties, perused the record and considered the relevant case law.

8. For an offense to come within the purview of the ATA 1997 it must satisfy S.6 of the ATA 1997. Each case however must be decided upon its own particular facts and circumstances which very often can be deduced from the FIR.

9. For S.6 ATA 1997 to be applicable there must be the act (offense) so defined in S.6 **and** the relevant criminal intention (*mens rea*) as defined in S.6 ATA 1997

10. Undoubtedly the offense so charged falls within the purview of S.6(2) being the offense at (k) involving the extortion of money (*bhatta*) or property as is clear from the FIR.

11. The required *mens rea* based on the particular facts and circumstances of this case is found at S.6(1) (b) and **not** (c) ATA 1997. S.6(1) (b) reads as under;

**"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."**

12. In the case of **Ghulam Hussain** (Supra) s full bench of the supreme court has emphasized that for an offense to come within the ambit of the ATA 1997 the *mens rea* **must** include the fact that the threat was designed or its purpose was to coerce and intimidate the public.

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13. Based on the particular facts and circumstances of this case the applicants have demanded bhatta however there is no evidence or even inference can be drawn that their intention **was designed** to coerce or intimidate the public. **Even in the FIR the complainant states that he did not tell any one about the bhatta demands and as such they remained personal and private to him** and as such we find that the act of demanding bhatta from the complainant based on the particular facts and circumstances of this case was **not** designed to coerce and intimate the public and as such the required mens rea for this case to fall within the purview of the ATA 1997 has not be made out by the prosecution.

14. As such the application is allowed and the ATA sections of the FIR shall be struck out of the FIR and charge and the case be immediately transferred from the ATC to the concerned trial court which shall proceed to decide the case expeditiously. These are the reasons for our short order of even date which is set out below for ease of reference;

“ For the reasons recorded later this criminal revision application is allowed and Anti-Terrorism Court No.XV, Karachi (Judicial Complex ATCs Central Prison) is directed to delete sections under Anti-Terrorism Act in respect of the charge and is directed to transfer this case to the concerned Sessions Court within 07 days of the date of this order. Whereafter receipt of the case Sessions Court shall immediately continue the proceedings in this matter.

A copy of this short order shall be sent to Judge, Anti-Terrorism Court No.XV, Karachi for compliance in respect of Special Case NO.17 of 2020, FIR No.231/2020 u/s.385/386/34 PPC r/w 7 ATA, PS Zaman Town, Karachi for compliance.”

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