

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABADBefore:Mr. Justice Jawad Akbar Sarwana.Mr. Justice Syed Flaz ul Hassan Shah.**Cr. Jail Appeal No.D-136 of 2022.***[Muhammad Sharif @ Chota Vs. The State]*

- Appellant : Muhammad Sharif @ Chota **through** Mr. Muhammad Aamir Qureshi, Advocate.
- Complainant : Muhammad Nadeem **through** Mr. Abdul Samee Chandio, Advocate.
- Respondent : The State **through** Mr. Altaf Hussain Khokhar, Deputy Prosecutor General.
- Date of Hearing : 21.04.2026.
- Date of Decision : 29.04.2026.

J U D G M E N T

Syed Fiaz ul Hassan Shah, J :- The Appellant has challenged the Judgment dated 29.11.2022 ("**impugned Judgment**") passed by the learned Anti-Terrorism Court-I, Hyderabad ("**Trial Court**") in ATC Case No.32 of 2021 emanating from Crime No.47/2021 for the offence under Sections 6(2)(k) Anti-Terrorism Act, 1997 (**ATA**) read with Section 384, 506/2 PPC registered with Police Station City, Hyderabad, whereby the Appellant was convicted under Section 265-H(ii) Cr.P.C and sentenced to suffer Rigorous Imprisonment for seven (07) years and to pay fine of Rs.50,000/- for offence under Section 6 (2)(k) punishable under Section 7(i) (h) of ATA, 1997 read with Section 384 PPC and in case of default, he would further undergo imprisonment for three (03) months more. He was further convicted for offence under Section 506 (2) PPC and

sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.25,000/- and in case of default, he would further undergo imprisonment for two months more. However, the appellant was extended benefit of Section 382(b), Cr.P.C.

2. The facts of the case are that the complainant, Muhammad Nadeem, a shopkeeper at Koh-e-Noor Plaza, Hyderabad, alleged that the accused, Muhammad Sharif alias Chhota, had been threatening him to vacate the market and demanding weekly extortion. On the relevant date, the accused, armed with a pistol, confronted the complainant at Bano Market, assaulted him, and threatened to kill him if he failed to comply with the demand for extortion, whereafter he fled the scene upon arrival of bystanders. The complainant subsequently lodged the FIR.
3. Learned counsel for the Appellant at the very outset contended that from the evidence adduced by the prosecution witnesses, none of the ingredient of Section 6 (2)(k) of ATA, 1997 is attracted, therefore, he will not press the Appeal provided the sentence awarded under Section 7(i) (h) of ATA, 1997 may be set-aside.
4. On the other hand, counsel for the complainant strongly opposed and contended that the Appellant is a *gunda* type person and has not only threatened and intimidated the complainant, but he had come to the complainant's place of business (crime scene) and demanded extortion by showing weapon, therefore, fear and insecurity spread over locality and thus, the conviction awarded under Section 7(i) (h) of ATA, 1997 is proper and does not warrant any interference by this Court.
5. The learned D.P.G in response to the questions framed by this Court vide order dated 08.04.2026, conceded that the case setup by the prosecution and the material evidence available on record does not fall within the ambit of "terrorism" and violate the principles laid down by the larger Bench of Honorable Supreme Court in a case of

Ghulam Hussain and others Vs The State and others (PLD 2020 Supreme Court 61).

6. Heard learned counsel for parties and perused the record.
7. We observed that the Trial Court has convicted and passed the sentence for commission of offence under Section 6 (2) (k) of ATA while reading with Section 384 PPC. The proviso of Sub-Section (2) (k) of Section 6 is not an independent, but interdependent upon Sub-Section (1) of Section 6. Therefore, a Conviction can pass and sentence could have been awarded under Section 7 ATA when the ingredients of "**Extortion**" defined in sub-section (2) of Section 6 ATA can qualify and exist as act of terrorism under sub-section (1) of Section 6 ATA and not otherwise. Conviction for "extortion" under Section 7 for the commission of Offence under sub-Section 2 (k) or commission of same offence of "extortion" under section 384 can be given to an accused person in anyone of two statutes if any person is guilty of an offence of "extortion". Fundamental distinction lies between the two statutes is that in the former it essentially required the ingredient of sub-section (1) of Section 6 i.e. act must qualify as act of "terrorism". The later, otherwise, qualify as an act of "extortion" punishable under the PPC but conviction cannot be given for an occurrence or for the same offence under two different statutes. Which otherwise would be violation of Section 403 Cr.P.C, Section 24 General Clauses Act, and Doctrine of Double jeopardy.
8. Parsimoniously, there is no question at all with regard to jurisdiction and only the Court of Anti-Terrorism can try offence of "extortion" be it punishable under section 7 of the Anti-Terrorism Act, 1997 or under Section 384 PPC for the reason that the offence falls within Anti-Terrorism Act, 1997 statute are exclusively triable by the Court of Anti-Terrorism while various offences of PPC triable by Court of Anti-Terrorism being Schedule Offence under the Anti-Terrorism Act, 1997.

9. Adverting back to differentiate the offence of "extortion" under ATA or PPC, although Complainant like in many other cases of identical nature, Counsel urge that there is strong factor of "fear and insecurity" involve in the case and sentence under section 7 qualifies. This critical issue was settled by the Hon'ble Supreme Court larger bench in Gulam Hussain case (supra) that how gruesome or cruel is offence, it will not punish under ATA unless it is proved that the act was committed with intent and design for terrorism and even not for private disputes as exactly the record of the present case transpired to us.

10. It is appropriate to reproduce hereunder:

"6. Terrorism. – (1) In this Act, "terrorism" means the use or threat of action where:

- a. the action falls with the meaning of sub-section (2), and
- b. 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
- c. the use of 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]."

(2) An "action" shall fall within the meaning of sub-section (1), if it:

a.

b.

(k) Involves extortion of money ("Bhatta") or property;

11. Upon a plain and harmonious interpretation of Section 6 of the Anti-Terrorism Act, 1997, it is evident that sub-section (1) or (2) (k) is not self-executing and must be read in conjunction with the foundational elements set out under Section 6(1). The legislative intent embedded in Section 6(1) or (2) ATA is to define the foundational elements or qualify as a "terrorist act," when it is committed with the specific intent or design to terrorize, intimidate, or coerce the public, state institutions, or sections of society and only where those elements are satisfied the provisions of Section 6(2)(k) ATA. Mere commission of a scheduled offence such as Section 384 PPC does not, by itself, attract the penal consequences under Section 6(2)(k) of the ATA unless the requisite mens rea defined in Section 6(1) is clearly established and therefore, the provision of section 7 (I) (h) ATA cannot be enforced. In light of the foregoing analysis, the invocation of the Anti-Terrorism Act, 1997, particularly Section 7 (I) (h) is contingent upon the act qualifying as a terrorist offence under Section 6(1). The Schedule to the ATA serves only to confer jurisdiction upon the Anti-Terrorism Courts but does not obviate the statutory requirement of proving intent or design to terrorize. In the present case, there is no cogent evidence to demonstrate that the offence was committed with the objective of spreading terror or coercion in the manner contemplated by Section 6(1). Therefore, the attempt to prosecute the appellants under the ATA framework is legally misconceived and unsupported by the factual matrix. Accordingly, sentencing under Section 7 (I) (h) ATA is not sustainable in law and cannot be upheld.

In **Ghulam Hussain v. State (PLD 2020 SC 61)**, the larger bench of Hon'ble Supreme Court held at paragraph No.13 that:

"...For the purpose of further clarity on this issue it is explained for the benefit of all concerned that the cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-Terrorism Act, 1997 are cases of those heinous offences which do not per se constitute the offence of terrorism but such cases are to be tried by an Anti-Terrorism Court because of their inclusion in the Third Schedule. It is also clarified that in such cases of heinous offences mentioned in entry No. 4 of the said Schedule an Anti-Terrorism Court can pass a punishment for the said offence and not for committing the offence of terrorism.

12. In view of above, the sentence passed by the Trial Court under the Anti-Terrorism Act, 1997 is not 7 (I) (h) maintainable; therefore, sentence awarded under Section ATA is hereby modified that the Appellant is convicted for the commission of offence under Section 384-PPC instead of commission of offence under Section 6(2)(k) ATA, 1997 as no ingredients of ATA are attracted and such absence tend to consider not an act of terrorism in the present case. Accordingly, the instant Cr. Jail Appeal is **dismissed** with partial modification as mentioned above, however, the conviction is **maintained** under Section 384 PPC as well as under Section 506/2 PPC only while extending the benefit of Section 382(B) Cr.P.C as has been done by the Trial Court alongwith payment of fine amount imposed by the Trial Court.

J U D G E

J U D G E