

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Const. Petition No. D- 4835 of 2016**

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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- 1. For katcha peshi.
- 2. For hearing of CMA 13676/2016.

Present:

**Mr. Justice Hasan Azhar Rizvi &  
Mr. Justice Aftab Ahmed Gorar.**

M/s Sardar Mohammad Latif Khan Khosa, Zafar Hussain Chaudhry and Qurban Ali Malano Advocates for petitioner alongwith petitioner.

Mr. Athar Abbass Solangi Advocate for respondent No.3/complainant.

Mr. Saleem Akhtar Buriro, Additional Prosecutor General for the State.

Date of hearing:       28-11-2016.  
Date of order:         -12-2016.

**ORDER**

**Aftab Ahmed Gorar J.,** Through instant Constitutional Petition, petitioner/accused Saeed Ghani s/o Abdul Ghani Mahesar has called in question order dated 22-10-2016, passed by learned Judge, ATC, Khairpur in special case No. 02 of 2015, whereby an application under section 23 ATA, 1997, moved on behalf of petitioner/accused for transfer of case from Anti-Terrorism Court to regular jurisdiction was dismissed.

2. Brief facts leading to filing of instant application are that petitioner/accused Saeed Ghani Mahesar and others are facing trial before Anti-Terrorism Court, Khairpur for offences under sections 365,395,337H(2),114, 148,149 PPC read with section 7 ATA, 1997, arising out of crime No.15 of 2014 registered at Police Station, Airport Abad-Sukkur. According to prosecution case,

on 04-02-2014 at 4.40 PM, complainant Ghulam Farooq Mahar lodged an FIR alleging therein that on the said date, he alongwith his friends, namely Asghar Ali, Ghulam Mustafa and Qutubuddin went to his plot of survey No. 586 at bypass near Ghulam Muhammad Mahar Medical College, new Sukkur to look after the same. It was about 3.00 PM when accused Rao Muhammad Shakir, Javed Kursi Jatoi, Abdul Ghaffar Rajput, Muhammad Panah Choochan, Saeed Ghani Mahesar, Saifullah Memon, Alidino Kharos, Waryam Choochan, Rao Asif, Iftikhar Naich, Rana Irshad, Waseem Rajput, Mukhtiar Shaikh, Nawaz Manganhar, Mehrab Kharos, Umar Hayat Soomro, Shahnawaz Kharos alongwith five unidentified persons, duly armed with KKs, G-3 rifles, guns and TT pistols came there and attacked upon the complainant party. On the instigation of accused Rao Muhammad Shakir, all accused persons kidnapped Qutubuddin as well as robbed their motorcycles. Meanwhile, all accused persons made aerial firing in order to create terror. Accused persons received injuries at the hands of their own companions. Thereafter, complainant party remained silent due to fear of weapons. Consequently, the above FIR was lodged and after usual investigation, challan was submitted.

3. Record reflects that earlier petitioner had moved an application before learned Judge, ATC, Sukkur for similar relief, but vide order dated 10-04-2014 said application was turned down and the said order was assailed before this court in Crl. Misc. Application No.D-368 of 2014. However, vide order dated 23-09-2014 this court set aside the order dated 10-04-2014 with directions to trial court to decide applications separately pertaining to each crime after considering all the material available on record. In the meantime, on the application of complainant, the case was transferred from the court of learned Judge, ATC, Sukkur and

assigned to learned Judge, ATC, Khairpur, on the orders passed by Hon'ble Chief Justice of this Court.

4. Learned counsel for petitioner/accused mainly contended that the alleged offence does not fall within the definition of 'scheduled offence' of ATA, 1997, as according to re-investigation report, the complainant party in collusion with police lodged four FIRs against Rao Muhammad Shakir, his relatives, employees and other servants within half an hour and no single FIR was registered against the persons of Arif Builders. He further contended that infact there is civil dispute between the complainant and accused party and due to such annoyance, complainant party has lodged false FIR due to enmity between Arif Builders and accused persons. He further contended that the facts narrated in the FIR would not fall within the ambit of section 6 ATA, 1997 and trial before ATC would be *coram non judice*. In support of his contentions, he relied upon the following case laws:

1. **Khuda-e-Noor v. The State (P L D 2016 SC 195).**
2. **Sagheer Ahmed v. The State and others ( 2016 S C M R 1754).**
3. **Muhammad Yakoob and others v. The State (2009 S C M R 527).**
4. **Tariq Mahmood v. The State and others ( 2008 S C M R 1631).**
5. **Mohbat Ali and another v. The State ( 2007 S C R M R 142).**
6. **Fazal Dad v. Col (Rtd) Ghulam Muhammad Malik and ors ( P L D 2007 SC 571).**
7. **Mirza Shaukat Baig and others v. Shahid Jamil and others ( P L D 2005 SC 530).**

5. Learned Advocate for respondent No.3/complainant argued that offence under sections 302, 337H(2), 148, 149 read with section 7 ATA from the facts of the case fell within the ambit of section 6 ATA, 1997. Learned Judge, ATC has rightly dismissed the application for transfer of case to the court of ordinary jurisdiction. In support of his contentions, he relied upon the following case laws:

**1. Shahzaib Khan alias Tippu and others v. Special Judge, ATC No.3, Lahore and others ( PLD 2016 SC 1).**

**2. Nazeer Ahmed and others v. Nooruddin and another (2012 S C M R 517).**

**3. Nooruddin v. Nazeer Ahmed and others (2011 P Cr. L J 1370).**

**4. Sunder Jakhrani v. Haji Muhammad Noor and another (2014 P Cr. L J 43).**

**5. Muhammad Imran alias Sawan v. Special Jduge, ATC, Multan and another (2007 Y L R 155).**

**6. Mehboob Ali v. Province of Sindh and others (2007 Y L R 987).**

6. Learned Additional P.G did not support the impugned order and argued that the impugned order is not an speaking order, as the learned trial Judge has not discussed and considered the entire material available on record, as directed by this court vide order dated 23-09-2014, passed in Crl. Misc. Application No.D-368 of 2014. Lastly, he prayed that the case may be remanded back to learned trial Judge with directions to decide the application afresh discussing entire material relating to the case after providing an opportunity of being heard to the parties.

7. We have heard learned counsel for the parties and scanned the entire material available on record. On perusal of record, it appears that earlier in Crl. Misc. Application No. D-368 of 2014, this court vide order dated 23-09-2014, set aside the order dated 10-04-2014, passed by learned Judge, ATC, Sukkur on an application moved on behalf of accused for similar relief and directed the trial court to decide applications separately pertaining to each crime after considering all the material available on record. Thereafter, the trial court passed the impugned order dated 22-10-2016. The operative part whereof reads as under:

“ I have given due consideration to the arguments of learned defence counsels, learned DDPP for the State and perused the entire case and in my view the alleged offence has got nexus with sectoin6 of ATA, 1997 as the accused persons on the same day i.e.

4.2.2016 allegedly committed the murder of one Muhammad Qasim the employee of Arif Builders by fire arm weapons and created panic, terror and sense of insecurity in the mind of persons of the area in the thickly populated area and such separate FIR bearing Crime No. 13/2014 has also been registered at the same PS against the above named accused and so also some others and such case is also pending before this court and today this court has also rejected the similar application in the above said case, therefore, I do not inclined to allow this application, which is hereby dismissed”.

8. Apparently, the impugned order is not an speaking order as it does not discuss and consider the entire material available on record/placed before the trial court, as directed by this court vide order of this court dated 23-09-2014, passed in Crl. Misc. Application No. D- 368 of 2014, as such order of this court has not been compiled with in its letter and spirit. In view of above facts and circumstances of the case, while setting aside the impugned order dated 22-10-2016, passed by learned Judge, ATC, Khairpur, the matter is remanded back with directions to learned Judge, ATC, Khairpur to pass an appropriate and speaking order on the application moved by the petitioner/accused in terms of section 23 ATA, 1997 for transfer of case to ordinary jurisdiction afresh discussing the entire material relating to the case so also relevant provisions of ATA, 1997 and the law laid down by Hon’ble Supreme Court as well as this Court on the above point, after providing an opportunity of being heard to both the parties, within a period of 30-days’ time from the date of receipt of this order.

9. The instant petition stands disposed of in the above terms.

JUDGE

JUDGE