

Split Decision: No ATA on rally turned 70 Violent

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

Cr. Rev. A. No.D- 35 of 2022

Ashok Kumar and another

Versus

The State

Applicants Ashok Kumar
and another

Through Mr. Ishrat Ali
Lohar Advocate

Respondent the State

Through Mr.
Shahzado Saleem
Nahiyoona, A.P.G

Date of hearing

23.01.2023

Date of order

27.01.2023

ORDER

Mohammed Karim Khan Agha J. The applicants in Cr.Revision Application D-35 of 2022 u/s 435,439-A R/W Section 561-A had challenged before this court the Order dated 01.11.2022 passed by the Anti-Terrorism Court (ATC) Mirpurkhas Division at Mirpurkhas in CrI. Tr. Application under Section 23 Anti Terrorism Act 1997 (ATA) whereby their application to have the trial transferred from the Anti Terrorism Court (ATC) to the Court of ordinary jurisdiction was dismissed.

2. The back ground to this order is that the application was taken up by a Division Bench of this court where my learned brother Judges were not able to reach a unanimous decision as one of my learned brother Judges vide order dated 14.12.2022 allowed the application and withdrew the case from the ATC Mirpurkhas and transferred the case to learned sessions Judge Umerkot whereas my other learned brother Judge vide order of even date took the opposite view and dismissed the application and directed the ATC to proceed with the trial under the sections of the ATA which had been inserted in the FIR. As a result of such divergent orders this matter was referred to the Hon'ble Chief Justice of this Court vide order dated 21.12.2022 for appointment of a referee judge. The Hon'ble chief Justice of this court appointed me as referee judge vide order dated 10.01.23 in the following terms;

"Justice Muhammad Karim Khan Agha is nominated as a referee Judge. Let this matter be placed/fixed before him under intimation notice to all concerned."

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3. No FIR is a part of the file however it appears from the record that the applicants have been booked under Crime No.71 of 2022, registered with P.S Umerkot City, for the offences under Section 324, 353, 337-A(i), F(i), & 427 PPC read with Sections 188, 504, 147, 148 PPC and 6/7 of Anti-Terrorism Act, 1997.

4. The brief facts of the case are that on the day of incident viz. 25.05.2022 SHO, P.S Umerkot City received information at Police Station that Pakistan Tahreek Insaf MNA Lal Chand Malhi was collecting his workers at Allah Wala Chowk and thus there was apprehension of breach of the peace. He along with police party comprising police force from other Police Stations as well arrived at the pointed place and found that the said MNA was sitting inside the Press Club and workers were gathering at the Chowk. At about 1700 hours, the said MNA came out of the Press Club and started calling the workers. SHO apprized him about a notification under Section 144 Cr.P.C. and that there was a ban over political gatherings however the **said MNA got riled up** and instigated the workers whereupon the workers started pelting stones at the police party with intention to commit murder. As a result, windcreens of three police mobile vehicles got smashed and SHO Ghulam Nabi Shah, Driver/PC Bhoomsingh, gunman of SDPO Abid and complainant himself received minor injuries, mostly on legs. After which the police resorted to teargas and disbursed the workers. Thereafter, the police took the injured to hospital for treatment and registered the present FIR against known (duly named), as well as unknown workers of PTI, totaling around 100/125 under Sections 324, 353, 337-A(i), 337-F(i), 427, 188, 504, 147, 148 PPC and 6/7 of anti-Terrorism Act, 1997.

5. After usual investigation the case was challaned which is now pending for trial before the Court of learned Judge, Anti-Terrorism Court, Mirpurkhas Division at Mirpurkhas (trial court) vide Special Case No.16 of 2022 (re- the State Versus Chetan and another).

6. Learned counsel for the applicants has fully supported the Order which referred the case back to the ordinary court for trial in accordance with the law and has relied upon his arguments and the same case law which he had relied upon the before the Division Bench **in addition** emphasizing the Constitutional rights under Article 16, 17 and 19 concerning Freedom of Assembly, Freedom of Association and Freedom of speech respectively and that the mens rea required under Section 6 ATA was completely lacking so as to bring the case within the purview of the ATA and even if S.144 Cr.PC had been violated the appropriate offence was found in Section 188 PPC. For case of reference his arguments and case law relied upon before the Divisional Bench is reproduced below;

"That the allegation against the applicants is that they had pelted stones upon the police party whilst they were on duty but according to him mere pelting of the stones, no offence in terms of Section 324 PPC was made out, therefore, the police party was not deterred in terms of Section 353 PPC; hence, the police had wrongly applied Sections 6 & 7 of the Act, therefore, the case does not fall within the jurisdiction of Anti-Terrorism

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Court and is triable by the Court of ordinary jurisdiction. In support of his contention, he has placed reliance upon the cases of **Ghulam Hussain and others V The State and others** (PLD 2020 Supreme Court 61) and **Abdul Rasheed alias Somi V the State and another** (2020 PCr.LJ 714)."

7. On the other hand learned APG for the State has fully supported the Order which found that the case should proceed before the ATC as the ATA was attracted to the facts and circumstances of the case and has relied upon his arguments and the same case law which was referred to in that order. For ease of reference his arguments and case law referred to in that Order is reproduced below;

"Learned A.P.G appearing for the State has vehemently opposed the application and stated that once the application filed by the applicants before this Court was rejected then best course for them is to face trial before the Court and during pendency of the trial, case cannot be withdrawn. He next submitted that per contents of the FIR, it is very specifically contended that the accused, in order to commit Qatl-i-amd of the police personnel on duty, had deterred them from performing their lawful duty by pelting stones which resulted in damage of their official vehicles; besides, some of the police personnel have sustained injuries on their person. Learned A.P.G further went on to say that when the police informed to the applicants in a very gentle manner that the Provincial Government has imposed Section 144 PPC, therefore, avoid to make procession but in spite of their resistance, the applicants and their followers had thrown stones upon the police party which is sufficient to attract the provisions of Section 324 & 353 PPC read with Section 6/7 of the Act. Due to violence made by the applicants/accused, police members had sustained injuries on their person, in order to deter them from discharging their lawful duty; hence, the case is exclusively falling within the ambit of Section 6/7 of the Act, therefore, instant application merits no consideration and prayed for its dismissal."

The order referred to the cases of **Jahangir Khan V Khalid Latif** (2021 SCMR 136) and **Qaiser Baloch and 3 others V the State** (2013 P.Cr.LJ 1259)."

8. I have deeply considered both the orders of my learned brother judges both of whom I have the upmost respect and deference for, gone through the record and heard learned counsel for the applicant as well as the State and considered the relevant case law.

9. The crux of the matter is whether based on the particular facts and circumstances of the case the matter fell within the purview of the ATA as well as other sections of the PPC mentioned in the FIR.

What amounts to terrorism?

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10. The law on what can amount to terrorism is found in Section 6 of the ATA which is set out below for ease of reference;

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

- (a) the action falls within 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 ¹[or a foreign government or population or an international organization] or create a sense of fear or insecurity in society; or
- (c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause ²[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].

³[Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.]

- (2) An "action" shall fall within the meaning of sub-section (1), if it:-
 - (a) involves the doing of anything that causes death;
 - (b) involves **grievous** violence against a person or grievous bodily injury or harm to a person;
 - (c) involves **grievous** damage to property ⁴[including government premises, official installations, schools, hospitals, offices or any other public or private property including damaging property by ransacking, looting or arson or by any others means];
 - (d) involves the doing of anything that is likely to cause death or endangers a person's life;
 - (e) involves kidnapping for ransom, hostage-taking or hijacking;

¹[(ee) involves use of explosive by any device including bomb blast] ²[or having any explosive substance without any lawful justification or having been

unlawfully concerned with such explosive];

(f) incites hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance;

³[(g) **involves taking the law in own hand**, award of any punishment by an organization, individual or group whatsoever, not recognized by the law, **with a view to coerce, intimidate or terrorize public, individuals, groups, communities, government officials and institutions, including law enforcement agencies beyond the purview of the law of the land;**]

(h) involves firing on religious congregation, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;

(i) creates a serious risk to safety of the public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civic life;

(j) involves the burning of vehicles or any other **serious** form of arson;

(k) involves extortion of money ("bhatta") or property;

(l) is designed to seriously interfere with or seriously disrupt a communications system or public utility service;

(m) involves **serious** coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties;

(n) 1[***]

(o) involves **serious violence** against a member of the police force, armed forces, civil armed forces, or a public servant;

(p) ²[(o) involves in acts as part of armed resistance by groups or individuals against law enforcement agencies; or

(q) involves in dissemination, preaching ideas, teachings and beliefs as per own interpretation on FM stations or through any other means of communication without explicit approval of the government or its concerned departments.]

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11. It is apparent that as in most criminal laws there has to be an actus reus **as well as** a mens rea for the act to amount to one of terrorism.

12. The actus reus is defined in Section 6 (a) (2) which acts will amount to terrorism **provided** the necessary mens rea is also proven.

13. For our purposes based on the **particular facts and circumstances of this case** the following acts **might** have been committed under Section 6 (a) (2) as are set out below;

- (d) involves the doing of anything that is likely to cause death **or endangers a person's life;**

I find that this sub section is most likely to apply

- (g) **involves taking the law in own hand**, award of any punishment by an organization, individual or group whatsoever, not recognized by the law, **with a view to coerce, intimidate or terrorize public, individuals, groups, communities, government officials and institutions, including law enforcement agencies beyond the purview of the law of the land;**

I find this section unlikely to apply as in my view it is likely applicable to examples where beheadings in public are made by unrecognized groups/banned organizations in order to intimidate the local community as has happened in the past in some Northern Areas of Pakistan. For example, today in Karachi where street crime is on the rise and a perpetrator is caught and severely beaten by the public by taking the law into their own hands would this fall within the ambit of the actus reus of terrorism? I do not think so.

- (m) involves **serious** coercion or intimidation of a public servant in order to force him to discharge **or to refrain from discharging his lawful duties;**

I find that this sub section might apply depending on how serious the coercion or intimidation was.

- (o) involves **serious violence** against a member of the police force, armed forces, civil armed forces, or a public servant;

I find that this sub section might apply depending on how serious the violence was.

- (p) involves in acts as part of **armed resistance** by groups or individuals against law enforcement agencies;

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I would note however that the above sub sections which may apply seem geared to **serious actions** against the writ of the State.

14. Now even if one of the above sub sections does apply (which I find they do in terms of (d),(m) and (o) being the actus reus) I need to consider whether **based on the particular facts and circumstances of this case** Section 6 (1) (b) or (c) are applicable (being the mens rea) which once again are set out below for ease of reference:

(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 ¹[or a foreign government or population or an international organization] or create a sense of fear or insecurity in society; or

© the use or threat is made for the **purpose** of advancing a religious, sectarian or ethnic cause ²[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].

³[Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.] (bold added)

15. So before considering the application of Sub Sections (b) and (c) of S.6(1) of the ATA let us consider some of the facts and circumstances surrounding this particular case as per FIR and some of the PW's whose evidence has been placed on record.

16. It appears that on 25.05.2022 PTI MNA Lal Chand Malhi was planning a peaceful political protest against the Government as was being carried out on that day by the PTI throughout Pakistan as is his/their (the PTI's) right under the law keeping in view Articles 16, 17 and 19 of the Constitution. He was in the press club whilst his workers were gathering at the Chowk waiting for him. As is often the case local administrations issue notifications under Section 144 Cr.PC ostensibly to avoid a law and order situation during a large gathering of people but in reality are often issued at the behest of the political opponents to the rally in order to thwart it which appears *prima facie* to be the situation in this case. Articles 16, 17 and 19 are all subject to reasonable restrictions which might, for example, be to proceed along a given route, to sit at a certain venue with the assumption that all rallies will be peaceful unless strong and cogent intelligence reports are received to the contrary and even then sufficient security arrangements might be able to be put in place in order to not unnecessarily stifle/curtail the aforementioned Constitutional rights all of which are essential to ensure a free and vibrant democratic society where the voice of opposing political parties and even public workers can be heard.

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For example, for not receiving payment of their dues on time. In all such cases S.144 Cr.PC should not be blindly imposed by the administration to stifle dissent and derail the Constitutional guarantees under Articles 16,17 and 19 of the Constitution which are fundamental rights as to do so would lead us into a police state governed by the rule of man as opposed to the rule of law. The object of the gathering was therefore to protest against certain actions of the Government. **It is to be noted that demonstrations in accordance with the law are excluded from Section 6 provided that they are peaceful which is within the spirit of Articles 16,17 and 19 of the Constitution.**

17. As per FIR at about 5pm PTI MNA Lal Chand Malhi came out of the press club and started calling the workers. The concerned SHO appraised him about the Section 144 notification which in effect banned his planned gathering which annoyed the said MNA keeping in view the fact that in his view it most probably had been issued in order to prevent his proposed peaceful rally/sit in against his political opponents. The said MNA then instigated his workers who pelted stones on the police allegedly with intention to commit the murder of the police. As a result of the pelting the window screens of three police mobiles were smashed and four police men all received minor injuries on their legs on account of the stones and bricks which were thrown at them. There were about 100 to 125 PTI workers at the gathering.

18. PW 1 Atta Muhammad who was the complainant in essence in his evidence repeats the content of his FIR however he states that the police retaliated with tear gas which brought the situation under control and the PTI had called for processions all over Pakistan. PW 1's evidence regarding the incident is corroborated by PW 3 Abdul Shakoor, PW 4 Abid Ali, PW 5 Roshan Din, PW 6 Jeand Khan and PW 1 (as typed) Arshad Ali who were all police officers at the place of the incident.

19. In the case of **Ghulam Hussain V State** (PLD 2020 SC 61) a larger 7 member bench of the Supreme Court after a detailed analysis of the ATA and the law of terrorism both domestically and internationally held as under at P.131 para 16;

16. *For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as terrorism within the meaning of section 6 of the Anti Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act **and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act** or the use or threat of such action must be to achieve any of the **purposes** mentioned in clause (c) of subsection (1) of section 6 of that Act. It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism **if it is not committed with the design or purpose specified or mentioned***

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in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta.(bold added).

20. It is quite clear from the above excerpt that the act as defined in Section 6 (a) (2) must be **designed** or its **purpose** must be to create the consequences which follow in Section 6(1) (b) and (c).

Did the Acts in this case fall within the purview of the ATA keeping in view Section 6(1) (b) and (c) of the ATA?

21. Having considered the particular facts and circumstances of this case as mentioned above it appears that the PTI on 25.05.2022 had arranged rallies/sit ins throughout Pakistan and that local PTI leader MNA Lal Chand Malhi organized a peaceful political rally/sit in from around the chowki near the Mirpurkhas press club on that day. As such the primary design, object and purpose of the gathering was to carry out a peaceful political protest against the Government and indeed no violence had broken out **until** PTI MNA Lal Chand Malhi was informed by the police that a ban under Section 144 Cr.PC was in place and he could not carry out his proposed rally. The question emerges therefore whether the protest simplicitor was **designed and intended** and had the **purpose** of committing any of the acts mentioned section 6(2) ATA i.e with regard to 6(1) (b) with the design to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect ¹[or a foreign government or population or an international organization] or create a sense of fear or insecurity in society **or** as per Section 6 (1) (c) ATA i.e for the **purpose** of advancing a religious, sectarian or ethnic cause ²[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].

22. In my view what *prima facie* seems to have happened is that when MNA Lal Chand Malhi was told that Section 144 Cr.PC had been imposed and he could not carry out his planned rally/sit in out of annoyance/anger he instigated his about 100/125 workers to attack the police as they were preventing him from carrying out his rally/sit in for political reasons as opposed to bona fide reasons. This resulted in his workers hurling bricks and stones at the police which caused a few minor injuries to a few police officers and their vehicles. I find that there was **no design** to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect ¹[or a foreign government or population or an international organization] or create a sense of fear or insecurity in society or the **purpose** of advancing a religious, sectarian or ethnic cause ²[or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including

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damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies].

23. This is because the evidence/material on record tends to suggest that the police were attacked by the workers of the PTI **on the spur of the moment out of anger when the police prevented the arranged PTI rally/ sit in to go a head. There actions seem to be a heat of the moment reaction to being prevented from carrying out their planned rally sit in by the police.** Had there been such a design or purpose then it is most likely that the workers would have come pre armed with firearms and would at the call of MNA Lal Chand Malhi murdered the police and over run them even without a section 144 Cr.PC notification being in the field. As it turned out only pieces of bricks and stones were thrown at the police which resulted in only a few ~~of~~ minor injuries to the police and a few window screens being damaged. To allow a case of this nature to fall within the purview of the ATA would almost open the door to nearly all cases where the police were fired on/resisted coming within the purview of the ATA or if clash took place between the police during an otherwise peaceful rally which would in my view severely impinge upon Articles 16, 17 and 19 of the Constitution and the promotion of free speech and the development of a democratic culture in society. The words **serious** in numerous of the actions under Section 6 (2) ATA cannot be overlooked nor can the mens rea in section 6(1) (b) and (c). ✓

24. As such I find that the provisions of the ATA are **not** applicable to the case in hand and allow the application and withdraw the case from the ATC Mirpurkhas and transfer the case to learned sessions Judge Umerkot to complete the trial expeditiously in accordance with law.

25. As such by a majority of two judges to one the application is allowed.

26. Before parting with this order however I would like to emphasize that an act of terrorism is an extreme Act and has a much different intent, purpose and design as compared to other criminal offences as discussed in **Ghulam Hussain's case** (Supra) and that it would be dangerous to lump nearly every criminal case under the ATA along with other PPC offences. The State must consider very carefully in line with **Ghulam Hussain's case** (Supra) whether any case in hand meets the some what stringent requirements to convert it into an ATA case as opposed to one only under the PPC keeping in view the fact that acts of terrorism are usually carried out by banned organizations/bodies who are challenging the writ of the State through force of arms like the TTP, BLA etc. A part of the problem is that Section 6 ATA seems to be very wide in its scope and application and as already recommended by the Supreme Court in **Ghulam Hussain's case** (Supra) the Legislature in its wisdom would be wise to revisit some of the offences which potentially fall within the purview of the ATA some of which do not appear to be traditional terrorism related offences but rather offences which warrant only to be dealt with under the PPC.

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27. The application stands disposed of in the above terms namely it is allowed by a majority of two judges to one.

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Applicant {

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Revision Application No.D-35 of 2022

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Muhammad Saleem Jessar.

14.12.2022

Mr. Ishrat Ali Lohar advocate for applicants.
Mr. Shahzado Saleem Nahiyoan, APG.

ORDER

MUHAMMAD IQBAL KALHORO, J.- Applicants, standing a trial in Special Case No.16/2022 arising out of Crime No.71/2022 PS. Umerkot City pending before Anti-Terrorism Court Mirpurkhas Division @ Mirpurkhas, have filed this revision application impugning an order dated 01.11.2022, whereby their application u/s 23 of Anti-Terrorism Act, 1997, challenging jurisdiction of the Anti-Terrorism Court in the matter has been dismissed.

2. Brief facts of the case are that on the day of incident viz. 25.05.2022 SHO PS Umerkot City received information at Police Station that Pakistan Tahreek Insaf MNA Lal Chand Malhi was collecting his workers at Allah Wala Chowk and thus there was apprehension of breach of peace. He along with police party comprising police force from other Police Stations as well arrived at the pointed place and found that the said MNA was sitting inside the Press Club, and workers were gathering at the Chowk. At about 1700 hours, the said MNA came out of the Press Club and started calling the workers. SHO apprized him about a notification u/s 144 CrPC and that there was a ban over political gatherings. But the said MNA got riled up and instigated the workers. Upon

which, the workers started pelting stones to the police party with intention to commit murder. As a result, windscreens of three police mobile vehicles got smashed and SHO Ghulam Nabi Shah, Driver/PC Bhoomsingh, gunman of SDPO Abid and complainant himself received injuries, mostly, on legs. After which the police resorted to teargas and disbursed the workers. Thereafter, police took the injured to hospital for treatment and registered present FIR against known (duly named), as well as unknown workers of PTI totaling around 100/125 u/s 324, 353, 337-A(i), 337-F(i), 427, 188, 504, 147, 148 PPC and 6/7 Anti-Terrorism Act, 1997.

3. After submission of the Challan, applicants filed an application u/s 23 of Anti-Terrorism Act, 1997 for transfer of the case to the court of ordinary jurisdiction, which was dismissed, and such order was challenged before this court in Criminal Revision Application No.D-28/2022. It was disposed of vide order dated 31.08.2022 directing the trial court to examine some of the witnesses and the applicants to file such application thereafter in the light of material brought on record. It appears that after examination of few witnesses, applicants repeated application u/s 23 of Anti-Terrorism Act, 1997, which has been dismissed vide impugned order as stated above.

4. Learned counsel for applicants has relied upon the case law reported as PLD 2020 Supreme Court 61 and 2020 PCrLJ 714 to boost up his arguments that the case does not fall within jurisdiction of Anti-Terrorism Court and is triable by the court of ordinary jurisdiction. His arguments have been rebutted by learned Additional PG appearing for the State.

5. The Honourable Supreme Court in the case of **Ghulam Hussain and others versus The State and others (PLD 2020 Supreme Court 61)** has held that for an action or threat of action to be accepted as terrorism within the meanings of S.6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of S.6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in cl. (b) of subsection (1) of S.6 of Act or the use or threat of such action must be to achieve any of the purposes mentioned in cl. (c) of subsection (1) of S.6 of

the Act. Requirements that needed to be satisfied for invoking cl.(c) of subsection (1) of S.6 were that the use or threat of action should be for the purpose of advancing a religious, sectarian or ethnic cause, or for the purpose of intimidating and terrorizing the public, social sectors, media persons, business community, or for the purpose of attacking the civilians, including damaging property by ransacking, looting, arson, or by any other means, government officials, installations, security forces or law enforcement agencies. Clause (b) of subsection (1) of S.6 has specified the design and cl.(c) of subsection (1) of S.6 has earmarked the purpose which should be the motivation for the act and the *actus reus* had been clearly mentioned in subsection (2) of S.6. Only when the *actus reus* specified in subsection (2) of S.6 was accompanied by the requisite *mens rea* provided for in cl. (b) or cl.(c) of subsection (1) of S.6 that an action could be termed as terrorism. Thus, it was not the fear or insecurity actually created or intended to be created or likely to be created which would determine whether the action qualified to be termed as terrorism or not but it was the intent and motivation behind the action which would be determinative of the issue irrespective of the fact whether any fear and insecurity was actually created or not. Any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, did not qualify to be termed as terrorism if it was not committed with the design or purpose specified or mentioned in cl. (b) or cl.(c) of subsection (1) of S.6 of the Act. Action could be termed as terrorism if the use or threat of that action was designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect, etc. or if such action was designed to create a sense of fear or insecurity in the society or the use or threat was made for the purpose of advancing a religious, sectarian or ethnic cause, etc. Creating fear or insecurity in the society was not by itself terrorism unless the motive itself was to create fear or insecurity in the society and not when fear or insecurity was just a by-product, fallout or an unintended consequence of a private crime. Mere shock, horror, dread or disgust created or likely to be created in the society did not transform a private crime into terrorism. Terrorism was a totally different concept which denoted commission of a crime with the design or purpose of destabilizing the government, disturbing the society or hurting a section of the society with a view to achieve objectives which were essentially political, ideological or religious.

Violent activity against civilians that had no political, ideological or religious aims was just an act of criminal delinquency, a felony, or simply an act of insanity unrelated to terrorism.

6. It is an admitted position, evident from a perusal of FIR, and the evidence recorded meanwhile, that all the accused are workers of PTI and had gathered before the Press Club for agitating some cause, and not to create any law and order situation. None of them was armed with club, stick, bat or danda, let alone any firearms to presume their intentions were ulterior or criminal and they wanted to take the law in their hands. It is alleged only that they had lobbed stones to the police party and as a result of which windscreens of few mobile vehicles were smashed injuring some members of the police team. Those injuries, as pointed out by the learned counsel for applicants, are minor in nature falling either u/s 337-A(i) or 337-F(i) PPC, bailable, and could be sustained by police while handling with any size of unruly mob of people, irrespective of their intention to commit any crime or not.

7. Since the injuries are minor and mostly on lower part of the body of police men, it cannot be said with certainty whether those injuries were sustained by them from the stones or from the shreds of windscreens of police mobiles, not even made as case property as is evident in the Challan, on account of their own negligence to handle and control the situation adequately. But, in any case, it is apparent that the action of pelting stones of the accused was not designed to coerce and intimidate or overawe the government, the public, a section of the public or community or sect, nor their action was for the purposes of advancing a religious, sectarian or ethnic cause or intimidating and terrorizing the public, social sectors, media persons etc. to be bracketed as terrorism. Even FIR does not allege that from alleged act of accused/applicants, any terror was created, or their action was designed and motivated to create terror in the society or advance any religious agenda or any other purpose which could be labeled as terrorism as defined above. It has been simply alleged that they pelted stones to police party with intention to commit murder. But the question is whether mere such allegation in FIR is sufficient to satisfy requirement of section 324 PPC and 6/7 Anti-Terrorism Act,

1997. The reply would be a big no, mention of such allegations in FIR would not transform act of applicants/accused as terrorism or even an attempt to take life of police force -- to attract scheme u/s 324 PPC -- which on the contrary was duly armed with official weapons and in the face of real threat to their life would not have hesitated to use them. Non use of weapons by the police force in retaliation of alleged stone-pelting by the workers of a political party itself is signature that the police force did not feel even threatened, what to say terrorized.

8. In view of above discussion and definition of terrorism, finally settled by the Honourable Supreme Court in Ghulam Hussain's case (*supra*), and the outlines drawn therein within which an action can be termed as terrorism, we are of the view that the rowdy behavior of the applicants / accused, amendable to some penal laws notwithstanding, was not an act of terrorism, nor the accused MNA Lal Chand Malhi or the workers of PTI, a political party, could be termed as terrorists against allegations of lobbing stones to police force, which is yet to stand the test of the trial. On the contrary, the political activity carried out within bounds of law is a healthy activity and it is necessary for social and political uplift of the society having domino effect trickling down to overall improvement in every sphere of human life. It cannot and should not be discouraged by registering criminal cases against the political workers, unless of course some law is broken. Disobedience of section 144 CrPC, as is the case here, is visit-able by section 188 PPC mainly, and/or any other relevant provisions of law but not under the provisions of Anti-Terrorism Act, at least. We, therefore, allow this application and withdraw the case from the file of Anti-Terrorism Court Mirpurkhas and transfer it to the learned Sessions Judge Umerkot to try either himself or assign it to any Additional Sessions Judge for a trial in accordance with law.

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

Criminal Revision Application No.D-35 of 2022

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Muhammad Saleem Jessar.

Date of hearing : 14.12.2022
Date of Order : 14.12.2022

Applicants Ashok Kumar : Through Mr. Ishrat Ali Lohar,
& Chetan Kumar Advocate.

The State : Through Mr. Shahzad Saleem
Nahiyoon, Additional P.G.

ORDER

Muhammad Saleem Jessar, J.- I have gone through the order dated 14.12.2022 passed by my learned brother Mr. Justice Muhammad Iqbal Kalhoro, whereby my learned brother by allowing this revision application has concluded in Par-8 of the order as under:-

"8. In view of above discussion and definition of terrorism, finally settled by the Honourable Supreme Court in Ghulam Hussain's case (*supra*), and the outlines drawn therein within which an action can be termed as terrorism, we are of the view that the rowdy behavior of the applicants / accused, amendable to some penal laws notwithstanding, was not an act of terrorism, nor the accused MNA Lal Chand Malhi or the workers of PTI, a political party, could be termed as terrorists against allegations of lobbing stones to police force, which is yet to stand the test of the trial. On the contrary, the political activity carried out within bounds of law is a healthy activity and it is necessary for social and political uplift of the society having domino effect trickling down to overall improvement in every sphere of human life. It cannot and should not be discouraged by registering criminal cases against the political workers, unless of course some law is broken. Disobedience of section 144 CrPC, as is the case here, is visit-able by section 188 PPC mainly, and/or any other relevant provisions of law but not under the provisions of Anti-Terrorism Act, at least. We, therefore, allow this application and withdraw the case from the file of Anti-Terrorism Court Mirpurkhas and transfer it to the learned Sessions Judge Umerkot to try either himself or assign it to any Additional Sessions Judge for a trial in accordance with law.

2. The applicants have been booked under Crime No.71 of 2022, registered with P.S Umerkot City, for the offences under Section 324, 353, 337-A(i), F(i) & 427 PPC read with Sections 188, 504, 147, 148 PPC & 6/7 of Anti-Terrorism Act, 1997 (Act).

3. Brief facts of the case are that on the day of incident viz. 25.05.2022 SHO, P.S Umerkot City received information at Police Station that Pakistan Tahreek Insaf MNA Lal Chand Malhi was collecting his workers at Allah Wala Chowk and thus there was apprehension of breach of peace. He along with police party comprising police force from other Police Stations as well arrived at the pointed place and found that the said MNA was sitting inside the Press Club, and workers were gathering at the Chowk. At about 1700 hours, the said MNA came out of the Press Club and started calling the workers. SHO apprized him about a notification under Section 144 Cr.P.C. and that there was a ban over political gatherings. But the said MNA got riled up and instigated the workers. Upon which the workers started pelting stones to the police party with intention to commit murder. As a result, windscreens of three police mobile vehicles got smashed and SHO Ghulam Nabi Shah, Driver/PC Bhoomsingh, gunman of SDPO Abid and complainant himself received injuries, mostly on legs. After which the police restored to teargas and disbursed the workers. Thereafter, the police took the injured to hospital for treatment and registered present FIR against known (duly named), as well as unknown workers of PTI, totaling around 100/125 under Sections 324, 353, 337-A(i), 337-F(i), 427, 188, 504, 147, 148 PPC and 6/7 of Anti-Terrorism Act, 1997.

4. After registration of the case and due process of law, the case has been challaned which is now pending for trial before the Court of learned Judge, Anti-Terrorism Court, Mirpurkhas Division at Mirpurkhas (trial Court) vide Special Case No. 16 of 2022 (re-the State Versus Chetan and another). After taking cognizance, the trial Court has framed charge against the accused; however, applicants had filed an application under Section 23 of the Act before the trial Court seeking transfer of the case from it to the Court of having an ordinary jurisdiction which was dismissed, therefore, the applicants filed Criminal Revision Application No. D-28 of 2022 before this Court which too was disposed

of by an order dated 31.08.2022 directing the trial Court to examine some of the witnesses and after examination of witnesses, the applicants had to file / repeat application in the light of the evidence brought on record. After examination of some witnesses, the applicants repeated their application which has been dismissed vide the impugned order.

5. Learned counsel for the applicants argued that the allegation against the applicants is that they had pelted stones upon the police party whilst they were on duty but according to him mere pelting of the stones, no offence in terms of Section 324 PPC was made out, therefore, the police party was not deterred in terms of Section 353 PPC; hence, the police had wrongly applied Sections 6 & 7 of the Act, therefore, the case does not fall within the jurisdiction of Anti-Terrorism Court and is triable by the Court of ordinary jurisdiction. In support of his contention, he has placed reliance upon the cases of *GHULAM HUSSAIN and others Versus The STATE and others (PLD 2020 Supreme Court 61)* and *ABDUL RASHEED alias SOMI Versus The STATE and another (2020 P.Cr.L.J 714)*.

6. Learned A.P.G appearing for the State has vehemently opposed the application and stated that once the application filed by the applicants before this Court was rejected then best course for them is to face trial before the Court and during pendency of the trial, case cannot be withdrawn. He next submitted that per contents of the FIR, it is very specifically contended that the accused, in order to commit Qatl-i-amd of the police personnel on duty, had deterred them from performing their lawful duty by pelting stones which resulted in damage of their official vehicles; besides, some of the police personnel have sustained injuries on their person. Learned A.P.G further went on to say that when the police informed to the applicants in a very gentle manner that the Provincial Government has imposed Section 144 PPC, therefore, avoid to make procession but inspite of their resistance, the applicants and their followers had thrown stones upon the police party which is sufficient to attract the provisions of Section 324 & 353 PPC read with Section 6/7 of the Act. Due to violence made by the applicants/accused, police members had sustained injuries on their person, in order to deter them from discharging their lawful duty; hence, the case is exclusively falling

within the ambit of Section 6/7 of the Act, therefore, instant application merits no consideration and prayed for its dismissal.

7. Heard and perused the record. Admittedly, the injuries sustained by the members of police party at the hands of applicants as well their companions are simple in nature; however, sustaining of injuries on the person of police personnel establishes that the accused had assaulted upon police party whilst they were performing their lawful duties. Not only this, the mob created / gathered by the applicants had also broken windscreen of three official vehicles belonging to the police. Pelting of stones and to raise violence against the police force shows that the accused had intentionally designed to coerce and intimidate the government functionary at public place and thereby they had taken law in their hands and thus created an havoc and terrorism at public place which tantamounts to design and motivate to create terror in the society. Mere fact that some of the injuries in nature are bailable, is no ground to discard the evidence of prosecution as mode and manner of the applicants/accused shows that they had no respect or honour for the writ extended by the Government through the Notification whereby Section 144 was imposed. Such act of the applicants did not at all suggest any private revenge or personal vendetta on the part of mob gathered by the applicants and their followers who being members of unlawful assembly formed for the purpose of taking out procession, blocking the road and committing other mentioned acts, certainly were designed to overcome the government/police party or public or community to create sense of fear and insecurity in the society. The act of damaging three official vehicles of the police party by the mob created by the applicants fully attracted offence of "mischief" defined in Section 6(g) of Anti-Terrorism Act, 1997. Therefore, act complained of, in circumstances did fall within the meaning of word "terrorism". Before parting with the order, I would prefer to reproduce sub-clauses (g) & (n) to sub-section (2) of Section 6 of Anti-Terrorism Act, 1997 which reads as under:-

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

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

- (a)
- (b)
- (c)
- (d)
- (e)
- [(ee)
- (f)
- [(g) involves taking the law in own hand, award of any punishment by an organization, individual or group whatsoever, not recognized by the law, with a view to coerce, intimidate or terrorize public, individuals, groups, communities, government officials and institutions, including law enforcement agencies beyond the purview of the law of the land;]
- (h)
- (i)
- (j)
- (k)
- (l)
- (m)
- (n) involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant."

8. In view of above legal position, it is crystal clear that the mob created by the applicants being members of unlawful assembly wanted to express their anger over police party forming the motive behind the incident mentioned under the F.I.R. Therefore, Anti-Terrorism Court, in the circumstances, had jurisdiction to try the applicants and their co-accused; as such, impugned order being open to no valid exception cannot be interfered with.

9. Moreso, it appears that the prosecution has examined witnesses namely SHO, P.S Ghulam Nabi Shah namely Arshad Ali as PW-1 at Exh. 35, complainant/SHO Atta Muhammad as PW-2 at Exh. 37, ASI Abdul Shakoor as PW-3 at Exh. 38, PC/gunman of DSP Umerkot City namely Abid Ali as PW-4 at Exh. 39, ASI Roshan Din as PW-5 at Exh. 40 and PC Jeand Khan as PW-6 at Exh. 41; thereby all the PWs had categorically deposed in consonance with the FIR and from their evidence a *prima facie* offence appears as well mode and manner of the offence shows commission of the offence within the ambit of Anti-Terrorism laws. Therefore, there is no illegality or infirmity in the impugned order which may warrant interference by this Court. Accordingly and in view of dicta laid down by the Hon'ble Supreme Court of Pakistan in case of *JAHANGIR KHAN Versus KHALID LATIF*

(2021 SCMR 136) as well laid down by this Court in case of *QAISER BALOCH and 3 others Versus The STATE* (2013 P.Cr.L.J 1259), instant Criminal Revision Application merits no consideration. Consequently, it is hereby dismissed. Since the trial has commenced and most of the material witnesses have been examined, therefore, trial Court is directed to expedite the trial and conclude it within six (6) months' time positively under intimation to this Court.

Shahid