

ORDER SHEET

IN THE HIGH COURT OF SINDH CIRCUIT COURT AT LARKANA

Crl.Rev.Appln.No. D - 14 of 2020.

Date of Hearing 03rd June, 2021.

Mr.Abdul Rehman Bhutto Advocate holds brief for
Mr.Ali Nawaz Ghanghro Advocate for applicant.

Mr.Sarfraz Khan Jatoi Advocate for complainant.

Mr.Aitbar Ali Bullo D.P.G.

ORDER.

OMAR SIAL, J:- The background to the present case is as follows.

1. F.I.R. No. 64 of 2016 was lodged on 22-5-2016 by a man named Mohammad Jatoi at the Market police station in Larkana. He narrated therein that he is in the business of cutting wood and that Bashir Ahmed Jatoi often use to say him that if he (Jatoi) wants to do business he would have to pay extortion money to him. The previous night, Jatoi, along with his son Yasir and 2 others, namely, Abdul Sattar and Izzat Khan were working at their wood cutting facility when Bashir Ahmed Jatoi, Wajid Ali Jatoi (both armed with a Kalashnikovs) while Rizwan Ali Jatoi (armed with a repeater) arrived there. An altercation between the parties ensued during which Bashir Ahmed Jatoi told his son Wajid Ali Jatoi to force closure of work and kill Yasir as the extortion money had not been paid to them. Wajid Ali Jatoi proceeded to shoot and killed Yasir. The assailants then left the premises resorting to aerial firing. F.I.R. No. 64 of 2016 was thus registered under sections 302, 386, 114 and 34 P.P.C.

2. The Investigating Officer of the case was of the view that as an allegation of demand of extortion money was raised in the F.I.R, the case fell within the ambit of terrorism; hence he added section 6 and 7 of the Anti-Terrorism Act, 1997 (Act of 1997) in the challan and submitted the same before the learned Anti-Terrorism Judge, Larkana. The accused filed an application under section 23 of the Act of 1997 before the learned Anti-Terrorism Court praying therein that no case of terrorism was made out and therefore the case should be transferred to a court of ordinary jurisdiction. The application was dismissed vide order dated 28-1-2017.

3. The accused being dis-satisfied with the order of 28-1-2017 challenged the same by invoking the revisional jurisdiction of this Court through Criminal Revision Application No. D-01 of 2017. This Court on 12-10-2017 allowed the application, set aside the order dated 28-1-2017 and ordered that the case be sent to the relevant court of ordinary jurisdiction as no offence of terrorism was made out.

4. The order of this Court dated 12-10-2017 was challenged by the complainant before the Honorable Supreme Court which declined to grant leave. The apex Court did however order (vide its order dated 27-2-2018) that the case proceed before the court of ordinary jurisdiction and if at any stage the ordinary court came to the conclusion that an offence of terrorism was being made out, it could transfer the case to an anti-terrorism court.

5. In compliance of the order of the Honorable Supreme Court the case was transferred to the court of the learned Additional

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Sessions Judge No.VI, Larkana for adjudication according to law. The learned Additional Sessions Judge No. VI, Larkana conducted the trial and reserved the case for judgment. On 16-10-2020, the learned trial court before announcing the judgment, passed an order that the case be transferred to the learned Anti-Terrorism Court, Larkana.

6. The accused once again challenged the jurisdiction of the learned Anti-Terrorism Court, Larkana; however, their plea once again, was dismissed by the Anti-Terrorism Court, Larkana vide its order dated 4-11-2020 and the parties were directed to re-submit their final arguments so that a judgment may be passed by it. It is this order of the learned Anti-Terrorism Court, Larkana which has been challenged in these proceedings.

7. The learned counsel for the applicants has primarily argued that the ingredients of an offence which would fall within the ambit of terrorism as defined in the Act of 1997 had not been made out whereas the learned counsel for the respondent has argued that the demand for extortion money fell squarely within the provision of section 6(2)(k) of the Act of 1997; hence a terrorism offence has been made out and thus an anti-terrorism court has exclusive jurisdiction to decide the matter. The learned D.P.G however supported the view of the learned counsel for the applicants in that according to him a terrorism offence had not been made out.

8. We have heard the learned counsel for the parties as well as the learned D.P.G. Our observations and findings are as follows.

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9. The requirements for a case to fall within the ambit of terrorism have now been clearly defined by the Honorable Supreme Court in the case of **Ghulam Hussain vs The State (PLD 2020 SC 61)**.

"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 meanings 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 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".

10. In the present case, the murder of a person has taken place ostensibly due to his father not paying extortion money to the accused. Be that as it may while reviewing the testimonies of the witnesses recorded at trial we do not find that the alleged act of demanding extortion money by the applicants was with a 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 it was made for the purpose of advancing a religious, sectarian or ethnic cause or intimidating

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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. In other words in the present case, while section 6(2)(k) does provide that extortion will fall within the definition of "action" for the purpose of section 6(1)(a), we are unable to agree that the use or threat of such action was designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of the Act of 1997 or that the use or threat of such action was to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act.

11. In view of the above, the revision application is allowed. Let the case be transferred from the learned Anti-Terrorism Court to the court of ordinary jurisdiction, which shall re-hear the final arguments of the learned counsel for the parties and then announce its judgment in the matter. It is expected that this exercise will be completed within a period of two months.


JUDGE


JUDGE

Announced on _____

Announced by us

06/07/2021
Justice Zafar Ahmad Raza


bdn an-ul-Karim