

IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Salahuddin Panhwar
Mr. Justice Muhammad Saleem Jessar

Criminal Revision Application No. 59 of 2016

[Abdur Rab alias Ali Akber and others v. The State and another]

Date of Hearing : 31.05.2017
Date of Order : 31.05.2017
Applicants : Through Mr. Fareed Ahmed A. Dayo,
Advocate
Complainant : Through Mr. Ali Gohar Masroof,
Advocate
The State : Through Mr. Zafar Ahmed Khan,
Additional Prosecutor General

ORDER

Salahuddin Panhwar, J:- Through instant Revision Application applicants (accused) have challenged the order dated 07.03.2016 passed by Anti-Terrorism Court No.I, Karachi, whereby application under Section 23 of ATA, 1997 was declined.

2. Precisely, relevant facts of the FIR are that the complainant Muhammad Waris Book registered FIR No.419 of 2015 under Section 302/34 PPC at P.S Shahrah-e-Faisal, Karachi stating therein that he was serving in Education Department and for the last four months there was dispute over nonpayment of Bhatta in his village on irrigation plot with Tahir Mugheri and his friend, who had tried to occupy the same, and in the month of March, they had killed his younger brother Mukhtiar Ali, Deputy Director I.B Department, Ashiq Hussain and Muhammad Bux, as such, his family was very disturbed and so afraid, hence, they came at Karachi and resided at the house of his cousin namely Riaz Hussain son of Abdul Ghafoor, who was serving in Accountant General Karachi, as Assistant Audit Officer. On

16.06.2015, the complainant along-with Ashfaq Hussain and Fayyaz Hussain went to the office of Riaz Hussain situated at PIA Old Terminal Karachi in separate cars. At the evening, they returned back. Riaz Hussain was in his car No.AZP-745, white colour Mehran and Ashfaq Hussain and Fayyaz Hussain were in separate Car. They went towards Sharik-ul-Hussain Imam Bargah situated in Block 16-A, Gulistan-e-Jauhar, for offering Asar Prayer. At about 1815 hours, when they reached at Service Road, near PIA Cricket Complex, Block-16 Gulistan-e-Jauhar, meanwhile, one car bearing registration No.KJK-275, Black Colour and one unknown number motorcycle, on which, two persons were sitting, came in front of car of Riaz Hussain and forcibly stopped. Four persons Roshan, Tahir, Abdul Rab @ Akber son of Mumtaz Mugheri and Ali Hassan Muhammad Nawaz Malkani came out form the car, having pistols and one person was sitting on the driving seat. All the four accused fired from their weapons on Riaz Hussain with intention to commit his murder and went away in their car and motorcycle by making firing. They went towards Riaz Hussain and found him dead. In the meantime, police came there and shifted the dead body to Jinnah Post Graduate Medical Centre and after completing formalities, dead body to Jinnah Post Graduate Medical Centre; after completing formalities, dead body was handed over to his brother Fayyaz Hussain. The complainant after funeral proceedings returned back and registered present FIR.

3. Learned counsel for the applicants has *inter alia* argued that the jurisdiction of this case lies to the ordinary court on the ground that the dispute is between two parties and this is a case of personal vendetta, whereas Section 6 provides scope of terrorism in larger sense; the word '*design*' is more important; mere allegations are not sufficient to prove that this is a case of

terrorism; tangible evidence is required while deciding the point of jurisdiction; and the trial Court was required to examine FIR, 161 Cr.P.C statement, as well, circumstantial evidence. In this case, FIR itself contends that there was a dispute between the parties and two FIRs were lodged at Larkana by rival parties under Section 302 PPC. The issue of jurisdiction was also agitated in earlier cases by judgment of Divisional Bench of this Court in Miscellaneous Application No. 09 of 2015 assailed on similar facts and circumstances and the matter was sent back to the ordinary court. He also refers 2017 SCMR 533 and 2016 SCMR 1754.

4. In contra, learned counsel for the complainant contends that this is a fit case of terrorism, due to demand of extortion and murder, complainant party shifted from Larkana and were residing in Karachi at the residence of deceased, but all accused persons including accused Mangan, who is a police official by '*design*' murdered deceased Riaz Hussain in an open place in the Karachi in the day time, hence, that act created panic in the vicinity. While referring judgment of the case of Kashif Ali v/s. The JUDGE, ANTI-TERRORISM, COURT NO.II, LAHORE and others (PLD 2016 SC 951) counsel contends that in this case ingredients of word '*design*' and '*action*' are applicable when this is a case of coupled with murder, that murder, happened after chasing the complainant party, such CDR report also supports the version of the complainant. Counsel relies upon the judgment of 2014 P.Cr.LJ 43, PLD 2005 Karachi 344.

5. On the other hand, learned Additional Prosecutor General contends that this is a case wherein accused persons were demanding the extortion on the issue of plot, and murders were committed; offence is day time; happened in populated area,

therefore, this is a case of terrorism and impugned order is maintainable.

6. Heard the counsel for respective parties and perused the record.

7. There is no cavil in the proposition of law that while dealing with a question of *jurisdiction*, it is the ‘*motivation*’, ‘*object*’, ‘*design*’ or ‘*purpose*’ behind the *act* is to be seen and for such purpose the Court has to make *tentative* assessment with reference to allegations, leveled in the F.I.R.; the material collected by the investigating agency and the surrounding circumstances, depicting the commission of the offence. Such criterion shall stand evident from reference to *operative* part of the case of *Kashif Ali v. Judge, Anti-Terrorist Court No.II* PLD 2016 SC 951 which is:

“12. In order to determine whether an offence falls within the ambit of Section 6 of the Act, it would be essential to have a **glance** over the allegations leveled in the F.I.R, the material collected by the investigating agency and the surrounding circumstances, depicting the commission of offence. ..

The said analogy has also been *affirmed* by the Apex Court while deciding the case of *Shaukot Ali v. Jan Muhammad* 2016 SCMR 533 while holding as:

“10. During the course of arguments, we have *observed* that basic premise of the arguments of learned counsel for the petitioner pivots around the judgment of a Five Member Bench of this Court in *Kashif Ali v. The Judge, Anti-Terrorism Court NO.II, Lahore and others* (PLD 2016 SC 951), wherein the issue of jurisdiction has been dealt with. It is appropriate to reproduce the relevant portion of Para 12 of the said Judgment for ready reference:

“12..... In order to determine whether an offence falls within the ambit of Section 6 of the Act, it would be essential to have glance over the allegations leveled in the FIR, the material collected by the investigating agency and the surrounding circumstances, depicting the commission of offence. Whether a particular act is an act of terrorism or not, the

motivation, object, design or purpose behind the said Act has to be seen...

The above *defined* criterion has *now* settled that *plea* of personal enmity would not *necessarily* exclude the case from mischief of Section 6(2) of the Act unless it appears that *act* was committed to settle personal score *secretly* or to give a *message* to others. This could only be determined by *examining* the manner in which the accused chose to commit the offence. While keeping in view such analogy and in view of Nazir Hussain case (2012 SCMR 157), wherein it is emphasized that the word '*action*' is important not '*design*', hence, courts are required to examine that in what manner incident was happened.

8. Admittedly, parties are having blood feud and two FIRs were lodged at Larkana by rival parties which *alone* however would not be sufficient to exclude application of Section 6(2) of the Act. The contents of FIR *prima facie* show that there was a demand of *bhatta* and failure to pay the same resulted into deaths in Larkana. This resulted in putting the complainant's party in *fear* thereby he had to shift from Larkana to Karachi. It is not disputed that the incident had taken place at Karachi while the accused persons are resident of Larkana hence *prima facie* the accused persons followed/chased the complainant party from Larkana to Karachi after planning to commit murder and executed such *plan* at a public place in a *day-time*. At the time of incident the complainant party was not on a way of their *routine* hence offence could not be done without *first* keeping watch and then following the complainant.

9. At this juncture, it would be conducive to refer paragraphs 13 and 14 of Kashif Ali case:-

"13. It is clear from the F.I.R that the accused persons conceived a plan in their mind prior to the occurrence to

disrupt the electoral process by eliminating the deceased and his companions, and subsequently executed it. It has not been mentioned in the F.I.R that the accused party obstructed or waylaid the deceased, but they chased them in order to execute a plan conceived in their minds. It was a pre-planned scheme and to execute the same, the accused party chased the vehicles of the deceased and when they reached near the vehicles of the deceased, they had opened fire due to which four persons lost their lives and several others sustained firearm injuries. It was not only confined to this but in fact the target killing was aimed to give a message to the voters and supporters of the deceased, the effect of which was to create a sense of fear or insecurity in the voters and general public, as provided in Section 6 of the Act. The reliance placed by the learned Counsel for the Respondent No.2 on the supplementary statement of the Complainant cannot improve the case of the accused persons.

14. The contention of the learned Counsel for Respondent No.2 that the incident was a result of personal enmity would not exclude the case of the accused-Respondents from the mischief of Section 6(2) of the Act. The **manner in which the incident had taken place and the time of occurrence should be taken note of, the effect of which was to strike terror in the supporters/voters and general public, therefore, the offence squarely falls within the contemplation of Section 6 (*ibid*).** The other contention of the learned Counsel for the Respondent No.2 that the incident had taken place at an abandoned place and there was no passerby at that time, is contrary to the contents of the F.I.R, as the place of occurrence was a public place and supporters and voters were around with their cars. Furthermore, the contents of the F.I.R reflect that the crowd present during the occurrence started fleeing from the place due to the terror created by indiscriminate firing”.

10. Perusal of above judgment recorded by five judges of the Hon’ble apex Court having binding effect upon this Court, as well, ordinary courts, shows that the issue of personal vendetta is immaterial and it is to be seen whether act was prompted, nature

of offence was gruesome, shocking and creating panic amongst the society and whereas in the case of 2016 SCMR 1754:-

“.....While probing the question of applicability of provisions of Anti-Terrorism Act, 1997, in any crime, it is incumbent that there should be a sense of insecurity, fear and panic amongst the public at large to invoke the jurisdiction of the Anti-Terrorism Court. Indeed, in each murder case there is loss of life which is also heinous crime against the society but trial of each murder case cannot be adjudicated by the Anti-Terrorism Court, except existence of peculiar circumstances as contemplated under sections 6, 7, 8 of Anti-Terrorism. Act, 1997....”

11. Keeping in view of Nazir Hussain and Kashif Ali cases it is pertinent to mention that this is a case of highhandedness, deceased was witness in FIR No. 55 of 2015 and complainant party due to fear shifted from Larkana to Karachi yet the accused persons not only *planned* to murder but also executed the *plan* at Karachi. This is a basic duty of the State to provide security to the witness under Witness Protection Act 2013; that deceased was witness in Crime No. 55 of 2015 under Section 302 PPC also lost his life. Thus, *prima facie* it is not a case of *simple* murder for personal enmity but surrounding circumstances speak *volume* as to how it was *planned* and *executed* perhaps with a message for others that *limitations* of town/city and time are immaterial for accused persons to murder those who dare to stand before them.

12. Worth to add that during arguments, it was also contended that revision does not lie against order passed by a judge of the Anti-Terrorism Court and accordingly Revision preferred was converted into petition. For this, it would suffice to say that sections are not important, while mentioning of sections on the title page is not material but it is to be seen whether the Court is competent to decide the same looking to the facts and

circumstances of the case hence this objection, being misconceived, lost its substance.

13. Looking to the *peculiar* circumstances of the instant case , if are put to touch-stone, so set by Apex Court, *prima facie* result in nothing but bringing the instant case within mischief of Section 6(2) of the Act and mere *earlier* lodged FIRs would be of no help at all. Accordingly, instant Revision Application is dismissed.

Judge

Judge