

Order Sheet

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

Criminal Revision Application No. D- 11 of 2019.

PRESENT:

Mr. Justice Khadim Hussain M. Shaikh.

Mr. Justice Arshad Hussain Khan.

Applicants : Through Mr.Habibullah G. Ghouri,
Advocate.

Respondent No.1. : Through Mr. Muhammad Noonari, D.P.G.

Respondents No.2 : Present in person.

Date of Hearing : 03.9.2019.

ORDER

ARSHAD HUSSAIN KHAN, J: Through this Criminal Revision Application the applicants have assailed order dated 09.3.2019, passed by learned Judge, Anti-Terrorism Court, Larkana, dismissing application under Section 23 of Anti-Terrorism Act, 1997, filed by the applicants for transfer of Special Case No.5 of 2018 re: State v. Tariq Ali Jatoi and another, emanating from Crime No.02 of 2018 registered with Police Station Kanga under Sections 302, 114, 34, 338-B, 337-H(2) PPC R/W Section 6/7 ATA, 1997 to the Court of ordinary jurisdiction.

2. Briefly the facts of the case as disclosed in the FIR are that on 10.4.2018 the wife of complainant namely Mst. Sameena, daughter of Iqbal Samo, aged about 20/22 years, who by profession was a signer, along with driver Barkat Ali Samo and friend Mumtaz Ali Magsi went to village Kanga to perform at stage in a circumcision ceremony of sons of one Niaz Hussain Junejo. While Mst. Sameena was performing at the stage in sitting position, as she was pregnant of 8 months, the accused namely Tariq Ali Jatoi and two unknown culprits with open faces having pistols in their hands reached at the place of incident and asked Mst. Sameena to sing in a standing position otherwise she will be killed upon which Mst.Sameena replied that she is pregnant and as such

unable to perform in standing position on which accused Tariq Ali Jatoi, on the instigation of unknown culprits, fired straight at Mst.Sameena, while she was giving instructions to her co-artist/associate, which hit her on back side and went out through chest and she fell down and then all accused made their escape good by making aerial firing. Upon receiving firearm injury, Mst.Sameena fell unconscious and subsequently she was taken into Causality Hospital for treatment but she succumbed to injuries and was pronounced dead, her fetus was also expired. Thereafter postmortem was conducted and the FIR was lodged to the above effect.

3. After registration of FIR, the investigation followed and in due course the accused were arrested and sent up to stand trial before learned Anti- Terrorism Court Larkana where an application under Section 23 of Anti-Terrorism Act, 1997, was filed on behalf of the accused/applicants, which was dismissed vide order dated 15.10.2018. The said order was challenged before this Court in Cr. Revision Application No.D-13 of 2018, which was disposed of vide order dated 19.02.2019 directing the learned Anti-Terrorism Court, Larkana, to decide the application a fresh. Thereafter learned Anti-Terrorism court after hearing the parties again dismissed the application U/S 23 of Anti-Terrorism Act, 1997, vide order dated 09.3.2019, which order is impugned and has given rise to the filing of instant criminal revision application. Relevant portion of the impugned order for the sake of ready reference is reproduced as under:

“I have given my due consideration to the arguments submitted by the learned counsel for both side and have gone through the record. Admittedly, the FIR of incident does not contain any of the penal section which may put the incident within the ambit of terrorism or Terrorist Act. However, it is the matter of record that the penal section within the ambit of Anti-Terrorism Act were included by Police subsequently, whereby section 386 of Pakistan Penal Code as well as section 6/7 of Anti-Terrorism Act were applied which are scheduled offences and exclusively triable by this Court. Perusal of record shows that the sections/offence within the ambit of Anti-Terrorism Act, have not been included merely on the basis of further statements of the witnesses but the witnesses were produced before Judicial Magistrate where they have got recorded their statement U/S 164 Cr.P.C. claiming the factum of Bhatta allegedly demanded by accused in their presence. Apart from above, the contents of FIR and witnesses in their statements have stated that incident was taken place during the course of stage performance in a ceremony of general public gathering whereby an artist was murdered, while singing song

on stage, therefore, the question of an act of terrorism as designed to commit offence may not be overruled. Thus the application filed U/S 23 Anti-Terrorism Act 1997 for transfer of case to ordinary Court merits no consideration at this stage, therefore, the same is hereby dismissed.”

4. Learned counsel for the applicants, during the course of arguments, has mainly contended that from the contents of FIR, which was lodged U/S 302, 114, 34, 338-B, 337-H(2) PPC with a delay of 14 ½ hours, do not attract the jurisdiction of Anti-Terrorism Court as no scheduled offence is alleged or made out. Learned counsel further contended that demand of *Bhatta* is not mentioned in the FIR and had there been any demand of like nature, it would have been mentioned in the FIR, thus application of section 386 and 6/7 of ATA in the FIR has been inserted with a malafide intention only to make the case triable by Anti-Terrorism Court. Learned counsel further contended that allegation of *Bhatta* was introduced in further statement of complainant and 161 Cr.P.C statements of P.Ws stating that the accused were demanding *Bhatta* prior to the present incident but no complaint, case or FIR was lodged by the complainant party to substantiate their assertion and besides, the complainant himself admitted before this Court earlier during the hearing of Criminal Revision Application No. D-13 of 2018 that no demand of *Bhatta* was made by the accused from them on which this Court was pleased to set aside the earlier order impugned in the said proceedings and remanded the matter to the trial Court for its decision afresh whereupon the learned trial Court recorded statements of complainant and witnesses wherein they again admitted that there was no such demand of *Bhatta* but again application under Section 23 of ATA, 1997, was dismissed, hence the present application. It is also argued that the incident occurred in odd hours of night in which the said singer died as a result of single firearm injury and there was no use of any explosives etc. and further there is no sectarian and religious issue involved in the case, therefore, Section 386 PPC r/w Section 6/7 of Anti-Terrorism Act is not applicable in the case and as such the case may be transferred to an ordinary court.

5. Respondent No.2/complaint, present in Court, while reiterating his stance before the learned trial court had extended his No Objection for the grant of present application.

6. Conversely, learned DPG while supporting the impugned order has vehemently opposed the present application and submits that a local singer was killed cold bloodedly in a public gathering during her performance at the stage and as such the incident was heinous one, which created fear and insecurity not only in the locality, but in the general public in the whole province as the incident got viral through print, electronic and social media. Thus, the offence squarely falls within the definition of terrorism as defined in Section 6 of Anti-Terrorism Act, 1997.

7. We have carefully considered the submissions of the learned counsel for the parties, perused the relevant record and case law.

8. In order to determine as to whether an offence would fall within the ambit of section 6 of Anti-Terrorism Act, 1997, it is essential to have a glance over the allegations made in the FIR, material collected during the investigation and surrounding circumstances. It is also necessary to examine whether the ingredients of alleged offence have any nexus with the object of the case as contemplated under section 6, 7 and 8 thereof. Whether a particular act is an act of terrorism or not, the motivation, object, design and purpose behind the said act is to be seen. It is also to be seen as to whether the said act has created a sense of fear and insecurity in the public or in a section of the public or community or in any sect, there can be no second opinion that where action results in striking terror or creating fear, panic, sensation, helplessness and sense of insecurity among the people in the particular area it amounts to terror and such an action squarely falls within the ambit of section 6 of the Anti-Terrorism Act, 1997, and shall be triable by a Special Court constituted for such purpose. Reliance can be placed on the case of Kashif Ali v. Judge, Anti-Terrorist Court No.II (PLD 2016 SC 951) and Shaukat Ali v. Jan Muhammad (2016 SCMR 533)

9. It may be observed that the venue of the commission of a crime; the time of occurrence, the motive which had led to the commission of a crime and the fact whether the said crime had or had not been witnessed by the public at large are the key factors for determining the issue whether a case did or did not fall within the parameters of the

Anti-Terrorism Act,1997. And the crucial question is whether the said crime had or had not the effect of striking terror or creating a sense of fear and insecurity in the people or any section of the people. Reliance in this regard can be placed on the case of *Najam Un Nisa v. Judge Special Court Constituted under Anti-Terrorism Act 1997* (2003 SCMR 1323)

10. In the present case, from the perusal of record, it appears that the deceased was a local artist/singer, who was murdered during her performance at the stage in a public gathering, and prima facie the incident appears to have created fear and sense of insecurity not only amongst the people present in the gathering/ceremony before whom the deceased was performing but also to the public at large on account of the print and electronic media. Besides above, the conduct of cruelty displayed by the applicant/accused that despite having come to know that deceased lady singer was having pregnancy of advanced stage he fired at her which not only resulting into the death of the lady singer but her unborn child also died in her womb. In the circumstances, the offence squarely falls within the ambit of section 6 of the Anti-Terrorism Act, 1997, and the case is exclusively triable by Anti-Terrorism Court.

11. Insofar as the offence regarding *Bhatta* is concerned, the record reflects that section 386 PPC was added subsequently on the basis of statements under section 164 Cr.P.C. of the witnesses recorded before the Magistrate and as such learned Anti-Terrorism Court has rightly held in the impugned order that without leading evidence it cannot be adjudged whether the allegation of *Bhatta* is true or false at this stage. Moreover, it is strange enough to note the conduct of complainant tilted towards the accused seems to be skeptical on account of either accused are the influential persons or he (complainant) has come to some settlement with the accused. Thereby, repeated attempts for transfer of the case to an ordinary court have been made, otherwise there appears no justification to support the transfer application of the accused person.

12. In the circumstances and keeping in view the law laid down by the Honourable Supreme Court in the cases mentioned (supra), we are

of the view that instant case would fall within the ambit of Section 6 of Anti-Terrorism Act, 1997, and as such the impugned order is upheld. Accordingly, instant Revision Application is dismissed being devoid of merit. Learned Anti-Terrorism Court-Larkana is directed to proceed with the case on day to day basis as provided under the provisions of Anti-Terrorism Act, 1997, and decide the case according to law.

Needless to state that the observation made herein above is only for deciding the point of jurisdiction; hence the trial court shall not be influenced by such an observation while deciding the case on merit.

JUDGE

Dated: 02.10.2019.

JUDGE