

IN THE HIGH COURT OF SINDH AT KARACHI*Present: Ahmed Ali M. Sheikh, CJ and Omar Sial, J*

Crl. Revision Application No. 16 of 2020

Hasnain Raza Kashif & another v. The State & another

Mr. Muhammad Azeem, Advocate for the applicants.

Mr. Liaquat Ali Khaskheli, Advocate for complainant.

Mr. Ali Haider Saleem, DPG.

ORDER

Omar Sial, J: Husnain Raza Kashif and Naeemullah alias Major Akhtar Abbas are nominated accused in F.I.R. No. 260 of 2019. They are charged for having committed offences under sections 395, 386, 342 P.P.C; section 25-D of the Telegraph Act, 1885 and section 7 of the Anti-Terrorism Act, 1997. Before the learned Anti-Terrorism Court No. XX at Karachi where there trial is ongoing they filed an application under section 23 of the Anti-Terrorism Act, 1997 praying that their case should be sent to a court of ordinary jurisdiction as the facts of the case revealed that the offence of terrorism was not made out. The learned trial court dismissed their application on 16-11-2019 on the ground that the case involved extortion and that section 6(2)(k) made extortion an action that fell within the definition of terrorism. It is this order that has been challenged through these proceedings.

2. The background to the case is that F.I.R. No. 260 of 2019 was registered on 17-5-2019 on the complaint of Rehmat Ali Khan. Rehmat recorded that on 14-5-2019 while he was at a mosque praying a black car with armed men and women had come to his house asking after him. His daughter told those people that he was at the mosque. Those persons came to the mosque and waited outside for him. When he came out he saw them wearing NAB caps and displaying NAB identification cards. One of those persons also introduced himself as Major Akhtar Abbas from the NAB office and said that they needed to search Rehmat's house. Rehmat took them to his house where those persons proceeded to rob him of his valuables. The accused then took Rehmat along with them in their car to the house of his cousin Saeedullah and proceeded to rob Saeedullah of his valuables. On 16-5-2019 the said Major Akhtar Abbas called Rehmat up and said that if he gave them Rs. 3 million the NAB inquiry against him will be closed. Subsequently, this amount was settled at Rs. 1 million.

3. Saeedullah Soomro registered F.I.R. No. 260 of 2019 under sections 385, 170, 171 and 34 P.P.C. on 14-5-2019 for the robbery in his house and the case arising out of that F.I.R. is being tried by a court of ordinary jurisdiction. On the other hand the F.I.R. registered by Rehmat Khan was sent to the Anti-Terrorism Court for trial as the element of extortion had been introduced in the version of the incident recorded by Rehmat Khan.

4. We have heard the learned counsel for the parties as well as the learned DPG.

5. The only reason which prevailed over the learned trial judge while passing the order was that the offence of extortion was listed in section 6(2)(k) of the Act of 1997 and thus the anti-terrorism court had jurisdiction in the matter. It appears that the learned trial court may not have been assisted properly and the decision of the Honorable Supreme Court in the case of Ghulam Hussain and others vs The State and others (PLD 2020 SC 61) was not brought to its notice. In this case it was held as follows:

“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.”

6. In essence for any of the actions listed in section 6(2) of the Act of 1997 it was also necessary that the action must also be with a design to achieve any of the objectives stated in section 6(1)(b) or (c) of the Act of 1997. The facts of the current case, the evidence collected and the arguments raised before us by the learned counsel do not reveal that the action of the accused was with the objectives stated in section 6(1)(b) or (c).

7. In view of the above, the impugned order is set aside and the case arising out of F.I.R. No. 260 of 2019 is withdrawn from the docket of cases before the learned Anti-Terrorism Court No. XX and directed to be sent to a court of ordinary jurisdiction where the case arising out of F.I.R. No. 260 of 2019 registered by Saeedullah Soomro is pending.

JUDGE

CHIEF JUSTICE