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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Misc. Appln. No.D-17 of 2017

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
30.01.2018.	

For hearing of case.

Mr. Habibullah G. Ghouri, advocate for the applicant.
Mr. Athar Abbas Solangi, advocate for respondent No.2.
Mr. Khadim Hussain Khooharo, Addl. P.G.

Applicant by means of this application has impugned the order dated 22.06.2017 passed by the learned Judge, Anti-Terrorism Court, Larkana on an application filed by respondent No.2 under Section 23 of Anti-Terrorism Act, transferring the Special Case No.12/2017 to the Sessions Judge, Larkana, for disposal in accordance with law.

The applicant is the widow of deceased PC Sadaruddin, who was allegedly murdered by the respondent No.2 on 12.4.2017 when he was performing duty at Polling Booth Govt. Primary School, Butra in respect of election on the seat of District Council, Larkana. This incident was reported by SHO PS Fatehpur, Larkana, namely, SIP Noor Ahmed on behalf of State and according to the story narrated in the FIR, he on the day of incident along with his staff went to visit said Polling Booth where deceased PC Sadaruddin was deputed to look after the election process. When he at about 0900 hours was seeking some information from the Presiding Officer, he saw respondent No.2/ ASI Khan talking with the deceased about the previous enmity with him and calling him out why he had come in the area to perform duty and then he fired at him from official SMG, resultantly PC Sadaruddin died at the spot. ASI Khan was arrested and consequently the instant FIR, for the offences under Sections 6/7 of Anti-Terrorism Act and 302, PPC, was registered against him.

The record reflects that after investigation the challan was submitted before the Anti-Terrorism Court, Larkana, where the said ASI Khan, the accused, filed an application under Section 23 of the Anti-Terrorism Act, which by the impugned order has been allowed and the case has been transferred to the learned Sessions Judge, Larkana for disposal in accordance with law.


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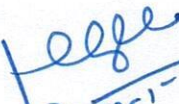
Mr. Habibuillah G. Ghouri, learned Counsel for the applicant has argued that deceased PC Sadaruddin was done to death by the accused when he was performing his official duty over the polling booth and he was in police uniform, therefore, the case is triable under the provisions of Anti-Terrorism Act, 1997; that the murder of a police official while on duty is a scheduled offence under Anti-Terrorism Act and cannot be transferred to the Court of ordinary jurisdiction, but this fact was lost sight of by the learned Anti-Terrorism Court while passing the impugned order; that the ground of personal enmity taken by the respondent has not been established from any material, therefore, the impugned order is not sustainable in law. Learned Counsel has also read Section 6(n) of Anti-Terrorism Act to emphasize that only the Anti-Terrorism Court has jurisdiction to try the reported offence.

On the other hand, Mr. Athar Abbas Solangi, learned Counsel for respondent No.2 and learned Addl. Prosecutor General, both have supported the impugned order and have contended that the incident is the result of previous enmity between the parties, who are related to each other, therefore, the dictum laid down by the Hon'ble Supreme Court in the case of *Waris Ali and 5 others Vs. The State* reported in 2017 SCMR 1572 is fully attracted in the present case. Learned Addl. P.G has further submitted that the alleged act of respondent No.2 was not designed to create terror in the society but to take revenge, therefore, the impugned order is unexceptionable.

We have considered submissions of the parties and perused the material available on record and have taken guidance from the case of *Waris Ali* (supra). No doubt PC Sadaruddin/deceased was allegedly killed by the accused when he was performing official duty at Polling Booth Govt. Primary School, Butra, but his murder appears to be a result of previous enmity between the parties. The alleged act of accused was not designed to spread or create terror in the public at large but to take revenge from the deceased. The impugned order reveals that during the arguments of application under Section 23 of ATA, 1997, learned Counsel for the accused produced a copy of FIR bearing Crime No.280/2010, registered under sections, among others, 302, PPC, which was registered by the accused against deceased Sadaruddin and others. This is a sufficient proof to point out to previous

enmity between the parties, and therefore, the contention of learned Counsel that there is no material to establish enmity between the parties is not correct. The complainant, namely, SIP Noor Ahmed in his FIR has stated specifically that the accused after referring to the previous enmity with the deceased had fired at him. Therefore, it is obvious that the motive for murdering the deceased was not connected to his performing official duty at the relevant time to attract provisions of Section 6(n), Anti-Terrorism Act, 1997, but it was a previous enmity between the parties, which prompted the accused to commit his murder. In such facts and circumstances, the alleged act of accused does not constitute an offence attracting the provisions of Anti-Terrorism Act, 1997. The learned Anti-Terrorism Court while deciding the application under Section 23 of the Anti-Terrorism Act has rightly concluded that the offence alleged against the accused is not a scheduled offence and the Anti-Terrorism Court has no jurisdiction to try the same. We see no material to differ with such an opinion. Consequently, this application is found without any substance and is dismissed accordingly.


30-1-2018
JUDGE


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