

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Rev. Appl. No.158 of 2024

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of main case

04.11.2024

Mr. Ghulam Rasool Sohu, advocate for complainant.

Syed Ali Murtaza Shah advocate for accused.

Mr. Haq Nawaz Talpur a/w M/s Uzair Rasool, Asad jakhrani, & Najam Naek Markhand, advocate for accused No.2.

Mr. Qurban Ali Malano a/w Ms. Samreen Abro, advocate for accused Hina Shah.

Mr. Faiz H. Shah Prosecutor General Sindh a/w Muhammad Iqbal Awan, Addl. P.G.

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MUHAMMAD IQBAL KALHORO J: This controversy arises out of an order dated 12.08.2024 whereby learned Judge, Antiterrorism Court Khairpur, while seized with Special Cases No.29/2023 re St. Vs. Pir Syed Asadullah Shah & others (Crime No.126/2023 U/s 302, 34, 370, 374, 328-A, 506, 171, 311, 376(3), 377 PPC Section 14(3), Sindh Prohibition Employment of Children Act, 2017, Section 3,4 & 7 of Trafficking in Persons Act, 2018 r/w section 7 ATA, 1997 of P.S. Ranipur); and No.30/2023 re St. Vs. Aijaz Ali Qazi, (Crime No.132/2023 u/s 212 PPC r/w section 7 ATA, 1997 of P.S Ranipur), transferred the same cases to learned District & Sessions Judge, Khairpur for trial and disposal in accordance with law by exercising powers u/s 23 of ATA, 1997 observing that the said cases do not fall within jurisdiction of Antiterrorism Court.

2. As a result of such order R & Ps of the said cases were sent to learned Sessions Judge, Khairpur, who upon receiving the same, made a reference dated 16.08.2024 to the Honourable Chief Justice through Registrar of this court stating that the cases were triable by Antiterrorism Court and learned Antiterrorism Court had wrongly exercised jurisdiction u/s 23 of ATA, 1997 in presence of an earlier order when such application filed by the parties was dismissed.

3. After the reference was received by the Registrar of this court, the office put up a note before Honourable Chief Justice for its decision. The Honourable

Chief Justice has been pleased to frame following two questions to be decided before deciding the reference and has constituted this bench for this purpose.

- 1) Whether learned ATC Khairpur was competent to pass order dated 12.08.2024 by which cases were transferred to the court of ordinary jurisdiction for trial, when one order dated 26.01.2024 passed by the predecessor in office of ATC Khairpur, on applications filed by the parties under section 23 of ATA was already in field?
- 2) Whether the learned Sessions Judge was competent to send reference to be taken on administrative side by the HCJ for transfer of the cases received to her Court by order dated 12.08.2024 passed on judicial side?

3. We have heard the parties at some length, and have noted at the very outset that before passing the order dated 12.08.2024, learned Antiterrorism Court Khairpur had already passed the order dated 26.01.2024 rejecting the application u/s 23 of ATA, 1997 filed by the accused for transfer of the case to the court of ordinary jurisdiction. That order was not challenged by the said accused or any one before the higher forum and hence the same had attained finality. It was still in operation, when the impugned order was passed. Although the learned Antiterrorism Court passed the order in exercise of powers u/s 23 ATA, 1997 but it did so without issuing a notice to either party or affording them an opportunity of hearing; or even any party re-agitating the matter through an application before it in terms of earlier order passed on 26.01.2024, whereby the Antiterrorism Court, while dismissing the application, had observed that the said application was premature, and had therefore, put the parties at liberty to re-agitate the matter before the court at appropriate time.

4. It has been admitted by all the parties that although the names of the parties are mentioned in the order but neither party was heard or given a notice by the learned Antiterrorism Court. Therefore, in principle, all the parties have agreed to the proposal that this reference may be decided in the terms, whereby both the parties may be put at liberty to move an application before Antiterrorism Court if they so wish in terms of section 23 of ATA, 1997 for transferring the case to the ordinary court or defend the same if such application is filed by other party. The court on receipt of such application would be obliged to give a notice to other side and after affording a proper opportunity of hearing to all concerned would decide the application within seven days. While deciding the application, learned Antiterrorism Court will not be influenced by

the orders dated 26.01.2024 and 12.08.2024. The application shall be decided independent of both the orders through a speaking order.

5. Before parting with this order, we direct the learned District & Sessions Judge, Khairpur to send R & Ps of both the aforementioned cases to learned Antiterrorism Court within two days of receipt of this order, which shall be sent to it through fax, so that learned Antiterrorism Court could decide the application within stipulated period.

The reference and the questions are accordingly replied and disposed of.

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