

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Revision Application No. 271 of 2022
(*Bashir Ahmed Sodhar Vs. The State*)

Date

Order with signature of Judge

Before:-

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

For hearing of main case.

Dates of hearing and Order:- 17.11.2024 and 20.11.2024.

Mr. Zulfiqar Ali Khan Jalbani advocate for the applicant
Mr. Ali Hyder Saleem, Additional P.G Sindh
Complainant Raham Ali Zardari, Assistant Mukhtiarkar Scheme
33, Karachi in person

ORDER

Adnan-ul-Karim Memon, J:- Applicant Bashir Ahmed is appealing a trial court's decision that denied his request to transfer Special Anti-Terrorism Court (ATC) case No. 52(vi)/2021(*re-The State v Saleem & others*) involving terrorism charges. The trial court opined that the case falls under its jurisdiction. An excerpt of which is reproduced as under:-

"The cumulative effect of my above discussion is that the instant crime has nexus with section 6 of ATA 1997. In short, the subject offense has been committed with the sole object of terrorizing the general public as well as Revenue staff and police personnel. The subject crime had not taken place on the basis of any personal vendetta or grudge, thus this court is competent to try the accused of the instant crime, same is not lacking jurisdiction. The instant application, therefore, being meritless is dismissed accordingly."

2. The facts of the case in a nutshell are that on December 14, 2020, a team of revenue and police officials arrived at Abdullah Shah Ghazi Goth to remove encroachments on Government land. It is alleged that a mob of 60-70 people, armed with sticks, stones, and firearms, attacked the officials, injuring several and stealing money and mobile phones. The mob also attempted to snatch weapons and kidnap officials. The police were called, and the officials were taken to the hospital. An FIR was registered against the accused, including applicant Bashir Ahmed, for various offenses under sections 147, 148, 353, 324, 395, 397, 365, 511, 337-A (i) of PPC including under Sections 6, 7, and 8 of the Anti-Terrorism Act, 1997 (ATA 1997). The applicant being aggrieved by and dissatisfied with the inclusion of terrorism charges applied section 23 of the Anti-Terrorism Act to transfer the above Special

Case to an ordinary court of law/Session Court, which request was declined by the trial court vide impugned order as discussed supra.

3. The learned counsel for the applicant argues that the land in question is privately owned, not government property, as such the learned ATC court has no jurisdiction to try the offenses. He points to a pending civil suit and a previous criminal case where a court declared the land as private qabooli land. The defense counsel argues that the Special Court (ATC) lacks jurisdiction to try the case because the incident does not involve terrorism and, therefore, does not fall under the purview of the Anti-Terrorism Act, of 1997. The defense side contends that the case should be transferred to a regular court of law/sessions court. He submitted that a stay order had been issued by this Court in a related civil suit as such the revenue official did not have to attack upon the villagers. He argued that the Deputy Commissioner's order to demolish the village was/ is illegal. He added that a separate civil case was also filed by one Rehan Zafar against the respondent and government authorities; and that this court issued a stay order in this case, indicating knowledge of the ongoing legal dispute between the parties. Despite this, the government authorities proceeded with the demolition, leading to the alleged conflict; that the incident did not involve terrorism, as there was no intent to create fear, insecurity, or destabilize the public at large, therefore, the case should be tried in a regular court of law/Sessions Court. In support of his contention, he relied upon the case of *Ali Nawaz & others v The State* **SBLR 2022 Sindh 1033**. He lastly prayed for allowing the Criminal Revision Application.

4. The prosecution team led by the Additional Prosecutor General assisted by the complainant Mukhtiarkar argues that the incident involved a large mob of armed individuals who attacked government officials, causing injuries and theft. This act of violence, they argue, created a sense of fear and insecurity among the public. The prosecution contends that the case involves a serious attack on revenue officials during an anti-encroachment operation. The accused were charged under various sections of the Pakistan Penal Code and the Anti-Terrorism Act; the case was transferred to a special court and has faced several delays due to the accused's absence and legal challenges as such these actions

constitute terrorism under the Anti-Terrorism Act, of 1997, and therefore the Special Anti-Terrorism Court has jurisdiction to try the case. He prayed for the dismissal of the Criminal Revision Application.

5. We have heard the learned counsel for the parties and pursued the material available on record and case law cited at the bar.

6. The fundamental issue for determination by this court is whether a Mukhtiarkar's order to remove encroachment on a government land/village/ (qabooli land), situated at Abdullah Shah Ghazi Village Sector 30 Scheme 33 Karachi if resisted by villagers, falls within the ambit of the Anti-Terrorism Act, 1997 (ATA). And, whether the Special ATC Case No. 52 (VI)/2021 needs to be transferred to the Sessions Court having jurisdiction in terms of Section 23 of ATA and/or to be tried under the Sindh Public Property (Removal of Encroachment) Act, 2010.

7. The finding of the trial court is that the actions of the accused, including the attack on government officials, theft, and attempted kidnapping, created a sense of fear and insecurity among the public at large. Besides this act was designed to hinder the performance of government duties and undermine the authority of the state. The trial court determined that these actions meet the criteria for terrorism under the Anti-Terrorism Act, of 1997, and therefore the Special Court (ATC) has jurisdiction to try the case and rejected the transfer application of the applicant.

8. To understand the rule position of the case, it is expedient to have a glance at Section 23 of the Anti-Terrorism Act, 1997, which allows for the transfer of a case from an Anti-Terrorism Court (ATC) to an ordinary court. This provision empowers the ATC to transfer a case if it determines that the offense does not fall within the scope of offenses triable under the ATA. Additionally, the case can be transferred if the offense does not meet the criteria for terrorism, is motivated by personal reasons, and does not significantly impact public safety. In such a scenario, Criminal intent is crucial to determine the nature and gravity of a crime, including jurisdiction.

9. The applicant claims an incident occurred on December 4, 2020, and was reported to the police on December 15, 2020. The police initially investigated and filed a report under Section 173 Cr.P.C. However, the Senior Superintendent of Police ordered the case to be closed as FRT 'C' Class (Cancelled) and directed the police to submit the case to the DPP East Karachi for final opinion but later on changed his mind and directed the Investigation officer to submit chargesheet vide letter dated 15.1.2021. It is further emphasized that the issue of land disputes involves multiple parties and civil court cases and in this regard various orders were passed by revenue authorities on the subject land, leading to the disposal of the previous FIR No. 04/2016 of PS Anti-Encroachment Force Zone-II Karachi. Be that as it may, the FIR was initially classified as a minor offense, but later, a decision was made to file charges. This inconsistency needs to be clarified.

10. This court called the progress report of the trial court, which reveals the following aspects of the case:-

“ That the instant case arising out of FIR bearing No. 1124/2020 u/s 147, 148, 149, 186, 353, 324, 397, 395, 365, 511, 337-A(i), 34 PPC r/w section 7 of ATA 1997 of P.S Sachal was received by the way of transfer from Anti-terrorism Court NO. XV Karachi vide letter No. ATC-XV/K-Div/3748 of 2021 Karachi dated 13.10.2021, in compliance of the directions passed by Honorable MIT-II Honorable High Court of Sindh Karachi, vide office letter No. 2367/ Transfer of cases, dated 06.10.2021.

That the case is heinous in nature, i.e. caused grievous hurt to the officials of Revenue departments with sticks, stones and firearm weapons who came at Abdullah Shah Ghazi Goth, sector 30, scheme-33 for removal of encroachment on the directions of Deputy Commissioner East Karachi. On showing weapons snatched Rs. 70,000/-, I-phone and touch mobile from officials of revenue departments and endeavored to snatch official weapons from encroachment staff and strove to kidnap Tapedar of Revenue department and Sub-Inspector of Anti-encroachment department.

That on 09.12.2021 the counsel for the accused moved application u/s 23 of ATA-1997 for transfer of the case to the ordinary court of law having jurisdiction. After hearing both the parties same was ordered as dismissed vide order dated 14.11.2022 and the same was challenged before the Honorable High Court of Sindh Karachi.

There are 17 accused who were facing trial and all the 17 accused had engaged their counsel individually, who on various dates remained absent, turn by turn on one or the other pretext, and case is not being proceeded due to their absence, besides accused also remained absent. After completion of the procedure as required u/s 87,88 Cr. P.C against the absconding accused the case was became ripped up for framing of charge. Subsequently, one of the accused namely Gulsher Ahmed S/o Muhammad Jumman jumped out the bail and absconded away, for which NBWs issued against him, and thereafter the procedure as required u/s 87, 88 Cr.PC was adopted and accused Gulsher declared as a proclaimed offender.

That the case was being stuck to the score that the accused had challenged the order dated 14.11.2022 before the Honorable High Court

of Sindh Karachi, which is pending adjudication there and the accused got adjourned the case on the same reason.

The undersigned assumed charge of the Court and in compliance of section 16 of ATA 1997 took the oath on 25.03.2024 in the instant crime/case and the case tried on the fast track to get conclude and the accused were put into hot to get their attendance along with their counsel(s). On 27.05.2024 charge was framed against the accused and ce became ripped up for the evidence.

That on the last date of hearing i.e. 21.09.2024, five (05) witnesses were present, but the case could not be proceeded due to the absence of one of the accused namely Javed as he is out of the country went to Iran/Iraq for Ziyarat of Holy place. The bail accused Javed was ordered to be dismissed and the case adjourned.

Now the case is fixed on 10.10.2024 for evidence.

11. It is manifest on the record that there is a dispute between the parties over land, in which both the parties claim and counterclaim, whereas the private parties have already filed a Civil Suits against each other and the matter is reported to be sub-judice before the competent court.

12. The Sindh Public Property (Removal of Encroachment) Act, 2010, protects public property in Sindh from encroachment. It provides a legal framework for identifying, removing, and preventing illegal encroachment on public land and property. The Act establishes a special tribunal to adjudicate disputes related to the ownership or lease of public property. The Act prescribes penalties for individuals or entities found guilty of encroaching on public property. The Act provides for the enforcement of its provisions through various legal and administrative measures. After all, it provides a comprehensive legal framework for addressing encroachment issues and empowers authorities to take necessary action to protect public assets.

13. Briefly Section 8(1) of the Sindh Public Property (Removal of Encroachment) Act, 2010, pertains to the offense of encroaching upon public property. It outlines the penalties for individuals who illegally occupy or use public land without lawful authority. The specific punishment for this offense is imprisonment for a term which may extend to one year, or with a fine, or with both. Section 11(1) provides that no Civil Court shall have jurisdiction to entertain any proceedings, Bar of jurisdiction and abatement of suits, grant any injunction, or make any order to a dispute that any property is not a public property, or that any lease or license in

respect of such public property has not been determined, for this Act, or anything done or intended to be done under this Act. (2) All suits, appeals, and applications relating to, encroachment and dispute that any property is not a public property or, that any lease or license in respect of such property has been determined, for this Act, shall abate on coming into force of this Act. Provided that a party to such suit, appeal or application may; within seven days of coming into force of this Act, file a suit before a Tribunal in case of a dispute that any property is not a public property or that any lease or license in respect of such public property has not been determined. Section 13 provides that a Tribunal shall have exclusive jurisdiction to adjudicate upon a dispute that any property is not public property or that any lease or license in respect of such public property has not been determined for this Act. Section 14

(1) provides that the Tribunal shall decide any suit or application in such manner and following such procedure as may be prescribed.

(2) Any order made by the Tribunal that conclusively determines the rights of the parties with regard to all or any of the matters in controversy shall be final and binding on the parties.

(3) The Tribunal shall have the power of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908).

(4) The proceedings before the Tribunal shall be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act No. XLV of 1860).

14. Prima facie, there were previous litigation related to the land ownership, including civil suits and a criminal case. Some of these cases have been dismissed and/ or are still pending. This raises the question of why the complainant acted on the assumption that the land was government property, leading to a violent confrontation if any. Another aspect of the case is that the government official reported unauthorized encroachment on government land. However, the private parties /alleged encroachers claimed to have a pending court case with a stay order in Civil suit No. 709/2019.

15. Coming to the main issue, the offenses under the Sindh Public Property (Removal of Encroachment) Act, 2010, are cognizable. This means that the police have the authority to arrest the accused without a warrant and investigate the case further, which provision of the law ought to have been invoked by the

Police, however, they rather preferred to invoke the jurisdiction of ATC on the purported plea that revenue officials were deterred from their duties with terror charges, but it is yet to be determined by the court whether sections 6, 7, and 8 of the Anti-Terrorism Act, 1997 were/are attracted or otherwise as the contents of F.I.R, prima facie show the allegations of general nature as such these offenses of PPC could be tried by the ordinary/regular court rather than the special court, in terms of the ratio of the judgment rendered by the Supreme Court in the case of *Ghulam Hussain case*, just on the plea of Mukhtiarkar and Police to the effect that injury was caused to them; however, the police report lacks a medical certificate required to charge the accused under section 337-A (i) PPC. Besides it is unclear whether the official intended to remove encroachment from public or private land. A regular court should determine this aspect of the case after framing the charge, and transfer the case if necessary under the law for the reason that Section 23 of the Anti-Terrorism Act, 1997 allows for the transfer of a case from an Anti-Terrorism Court (ATC) to an ordinary court. This provision empowers the ATC to transfer a case if it determines that the offense does not fall within the scope of offenses triable under the ATA. Additionally, the case can be transferred if the offense does not meet the criteria for terrorism, is motivated by personal reasons, and does not significantly impact public safety. In such a scenario, Criminal intent is crucial to determine the nature and gravity of a crime, including jurisdiction. The impact of a crime can vary greatly between individuals and locations. A crime cannot be automatically classified as terrorism based solely on its impact, especially if it stems from personal enmity or vendetta. The case of *Ghulam Hussain and others v. The State and others* (PLD 2020 SC 61) provides guidance on this matter. Similarly, the case of "*Sadiq Ullah and another v The State and another*" (2020 S C M R 1422) can also be safely referred to on the subject issue. Terrorism is a specific type of violence aimed at achieving political or ideological goals, not personal ones.

16. Without prejudice, the right of respondent No.2 to the case in hand, the incident, while unfortunate, does not meet the definition of terrorism as per the precedent set in cases of "*Deputy*

Director Finance and Administration FATA through Additional Chief Secretary Fata, Peshawar and others versus Dr. Lal Marjan and others” (2022 SCMR 566); the relevant portion from Page No.571 and All Pakistan Newspapers Society & Others vs. Federation of Pakistan & Others PLD 2012 SC 1.

17. In view of the above position of the case, it is yet to be ascertained by the ordinary court having jurisdiction after framing the charge whether the applicant and others intended to target revenue officials with the motive to cause loss to the lives of the officers and whether the incident was motivated by personal enmity, not terrorism. In this scenario, the Anti-Terrorism Court erroneously claimed jurisdiction, as prima facie, the case does not meet the criteria for terrorism charges under the Anti-Terrorism Act, of 1997.

18. In view of the above facts and circumstances of the case, this Revision Application is allowed and the impugned order dated 14.11.2022 in New Special ATC Case No. 52 (VI) of 2021 passed by Anti-Terrorism Court No. VI, Karachi is set aside with observations that the case does not fall within the ambit of Section 6 of the Anti-Terrorism Act, 1997 and therefore the same shall be tried by the ordinary court having jurisdiction.

19. Above are the reasons assigned in support of our short order dated 20.11.2024.

JUDGE

JUDGE