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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Misc. Application No.D-20 of 2014.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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01.10.2018.

Present:

**Mr. Justice Zafar Ahmed Rajput
Mr. Justice Irshad Ali Shah**

Applicant : Atma Ram
Through Mr. Ali Nawaz Ghanghro,
Advocate.

Respondent No.2 : Mehdi Hassan
Through Mr. Manzoor Hussain Baloch,
advocate.

The State : Through Mr. Khadim Hussain
Khooharo, Addl. P. G.

ORDER

ZAFAR AHMED RAJPUT, J This Crl. Misc. Application under section 561-A, Cr.P.C is directed against the order dated 26.02.2014, whereby the learned Judge, Anti-Terrorism Court, Larkana returned the FIR bearing No.24/2014, registered at Police Station Dari, District Larkana under section 324,, 337-H(2), 34, PPC R/w Section 6/7 of Act of 1997, observing that the alleged offence has got no nexus with section 6 & 7 of the Act, 1997.

2. Briefly stated the facts of the case are that the applicant/complainant lodged the aforementioned FIR on 25.02.2014 alleging therein that his cousin, namely, Dr. Partab Rai was a Registrar in Shaikh Zaid, Children Hospital, Larkana, and in evening time he was running his private clinic in Ghulam Ali Medical Center, Bakrani Road Larkana; that on 24.02.2014, he went to meet his cousin at his private clinic where Dispenser Mujahid Hussain was standing at the door when a person came and asked Mujahid Hussain showing hurriedness to give



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an early appointment for the patient whereon Mujahid Hussain replied him to wait for his turn which annoyed him and he went away while issuing threats, and then at about 05:00 p.m, the said person entered into the clinic and made straight fires on Dr. Partab Rai with intention to commit his murder, which hit him and he fell down on chair; that they tried to apprehend the accused but he escaped away, they went out at road and saw that another un-muffled accused armed with K.K was also standing there and both the accused in order to create terror made fires in the air and then they both run away on a Motorcycle; that then they saw Dr. Partab Rai, who sustained firearm injuries at right side of chest, left side of neck and right leg of thigh and the blood was oozing while he was lying unconscious; that he was taken to Casualty of CMCH Larkana where he was given first aid and he then was taken to Agha Khan Hospital Karachi.

3. Learned counsel for the applicant contends that injured Dr. Partab Rai after being paralyzed due to firearm injuries in spinal cord, died. He further contends that the alleged act of accused persons created terror in common people in general and in minority Hindu community in particular who are subjected to victimization for Bhatta. He also contends that the learned Judge of Anti-Terrorism Court did not elaborate the circumstances of the terrorist act on the part of the accused persons who after targeting Dr. Partab Rai made aerial firing to create terror on a busy road in presence of number of people hence the impugned order being not sustainable in law is liable to be set aside with direction to the Court of Special Judge, Anti-Terrorism Court to take the cognizance of the offence under section 6/7 of the Act, 1997.

4. On the other hand learned counsel appearing for the respondent/accused as well as learned Addl. P. G supporting the impugned order maintain that there is no nexus of Section 6/7 of the Act of 1997 with the alleged offence and even it is not the case of the applicant/complainant, so far the FIR is concerned, that the attempt of

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Committing murder of Dr. Partab Rai was made in sequel of murder of a fellow of minority community or for extortion of money.

5. Heard learned counsel for the parties and perused the material available on record.

6. It would be relevant to mention here that in the case of *Muhbbat Ali and another vs. The State (2007 SCMR 142)*, the Honorable Supreme Court of Pakistan has laid down the principles to determine the act of terrorism to attract the provision of section 6 of the Act of 1997, as under :


"In order to determine as to whether an offence would fall within the ambit of section 6 of the Act, it would be essential to have a glance over the allegations made in the F.I.R., record of the case and surrounding circumstances. It is also necessary to examine that the ingredients of alleged offence has any nexus with the object of the case as contemplated under sections 6, 7 and 8 thereof. Whether the particular act is an act of terrorism or not, the motivation, object, design or 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 any section of the public or community or in any sect."


7. While examining the case in hand on the above touchstone, it is manifest on the face of it that the alleged offence took place because of sudden annoyance of the accused on not examining his patient out of turn. There is no allegation of sectarian and religious issues and no threat or over awe to society or section of people or public is alleged in the case. It is an admitted fact that deceased Dr. Partab Rai though was a public servant but he was running his private clinic at the time of alleged incident, hence the alleged act was not committed while performing his public duty. There is no criminal record against the accused showing their involvement in terrorist activities or demanding extortion money. The allegation regarding demanding "Bhatta" by the respondents/accused could not be established ex-facie, as record does

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not reflect if any such material was collected in the investigation so much so, nothing in this regard is mentioned in the F.I.R., therefore, the question of creating terror in the minds of general public has not arisen; hence, the alleged offence has got no nexus with the section 6 and 7 of Anti-Terrorism Act, 1997.

8. For the foregoing facts and reasons, we have found no illegality in the impugned order passed by the Judge, Anti-Terrorism Court, Larkana requiring any interference of this Court under its inherent powers. Accordingly, instant Crl. Misc. Application is dismissed being not maintainable.


Judge


Judge

M.Y.Panhwar/**