

PLJ 2017 Quetta 94 (08)

Present: MRS. SYEDA TAHIRA SAFDAR and ZAHEER-UD-DIN KAKAR, JJ.

MUHAMMAD SADIQ and others--Petitioners

Versus

SPECIAL JUDGE ANTI-TERRORISM COURT-II

QUETTA and another--Respondents

C.P No. 508 of 2017, decided on 12.06.2017

Anti Terrorism Act, 1997 (XXVII of 1997)--

----S. 6, 7 & 8--Constitution of Pakistan Act, 1973, Art. 199--
Jurisdiction & scope--Ingredients--Determining factor--Question of--
Whether an act is terrorism or not the motivation object design and
purpose behind said act is to be seen--It is also be seen as said act
has created a sense of fear and insecurity in public or in a section of
public or community or in any sect and, whether action results in
striking terror or creating fear panic sensation, helplessness and
sense of insecurity among people in particular area, it amounts to
terror and such an action squarely falls within ambit of Section 6 of
Anti-Terrorism Act and shall be triable by a special Court
constituted for such purpose--Petition dismissed. (Pp. 95 & 96) A

1992 SCMR 1170, *ref.*

Anti Terrorism Act, 1997 (XXVII of 1997)--

----Ss. 6, 7 & 8--Terrorist act--Determining factor--Validity--Courts
have only to see whether terrorist act was such which would have
tendency to create sense of fear and insecurity in the minds of
people or any section of the society (P. 96) B

Mr. Abdul Kabir Khan, Advocate for Petitioner.

Date of hearing: 22.5.2017.

JUDGMENT

Zaheer-ud-Din Kakar, J.--The petitioners through this
petition under Article 199 of the Constitution of Islamic Republic of
Pakistan 1973 assails the validity of order dated 24.4.2017 "the

impugned order", passed by the Special Judge, Anti-Terrorism Court-II, Quetta "the trial Court", whereby an application for transfer of the case was dismissed.

2. Precisely stated, the facts of the case are that on 17.9.2016 at about 5:15 p.m, the complainant Captain Adnan Ishaq of 74 Wing, Chiltan Rifles, lodged F.I.R No. 264 of 2016, under Sections 337-AD, 353, 392, 511, 186, 147, 148, 149, PPC read with Section 7 ATA with Satellite Town Police Station, Quetta against the petitioners with the allegations that on the fateful day, he (complainant) along with other FC personnel were checking the vehicles. Meanwhile, one Land Cruiser bearing registration No. 1EF-20 having black glasses, wherein three armed gunmen were present, came from western side, which was stopped and on query a permit was showed which was not acceptable. Then a person, whose name was later on known as Haji Sadiq, said that no one could stop him, thus, a quarrel took place which resulted in causing injury to sepoy Mureed Abbas and they also attempted to snatch the official weapon from sepoy Akmal. The FC personnel overpowered the petitioners and recovered different types of weapon and rounds, detail mentioned in F.I.R.

3. After completion of investigation, challan of the case was submitted before the trial Court. During pendency of the case, an application under Section 23 of the ATA, 1997 was moved on behalf of the accused (petitioners). The trial Court, through order dated 26.4.2017 rejected the application, hence this petition.

4. Learned counsel for the petitioners contended that the impugned order passed by the trial Court is against the law; that the trial Court has mis-appreciated the facts of the case; that the provisions of Section 6 of ATA, 1997 not attracted in this case; that the offences mentioned in the F.I.R have no nexus with the definition of Section 6 of the Act. Finally, he prayed for setting aside the impugned order and transfer of the case to the ordinary Court.

5. We have heard the learned counsel for the petitioner and has gone through the available record. In order to determine as to whether an offence would fall within the ambit of Section 6 of Anti-Terrorism Act, 1997, it is essential to have a glance over the allegations made in the FIR, material collected during investigation and surrounding circumstances. It is also necessary to examine whether the ingredients of alleged offence have any nexus with the object of the case as contemplated under Sections 6, 7 and 8 thereof. Whether a particular act is an act of terrorism or not. The motivation, object design and porpose 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

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A insecurity in the public or in a section of the public or community or in any sect and whether the action results in striking terror or creating fear, panic, sensation, helplessness and sense of insecurity among the people in the particular area it amounts to terror and such an action squarely falls within the ambit of Section 6 of the Anti-Terrorism Act, 1997 and shall be triable by a Special Court constituted for such purpose.

6. Section 6 of the Anti-Terrorism Act, 1997 provides the definition of "terrorism". In order to better appreciate the legal position, Section 6(b) of the said Act which defines a "terrorist act" is reproduced as under:

"6. Terrorism.--(1) In this Act, "terrorism" means the use or threat of action where

(a)

(b) The use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society."

B 7. A bare reading of the above quoted provision of law makes it crystal clear that Courts have only to see whether the "terrorist act" was such which would have the tendency to create sense of fear and insecurity in the minds of the people or any section of the society. The honourable Supreme Court in a case reported as *The State through Advocate General, N.W.F.P. Peshawar v. Muhammad Shafiq* PLD 2003 SC 224 has held as under:

"We have to see the psychological impact created upon the minds of the people. It is also not necessary that the said act must have taken place within the view of general public so as to bring it within the compass of the Act. Even an act having taken place in a barbaric and gruesome manner, if it had created fear and insecurity, would certainly come within the purview of the act."

8. In the present case, the petitioners have committed offence on the main road, target was frontier Corps officers and officials and during scuffle with the FC officials, sepoy Mureed Abbas sustained injuries and they (petitioners) also tried to snatch official weapons from FC personnel. They were overpowered and the FC personnel recovered different types of weapons and rounds from their possession. The act of the petitioners on main road created fear and insecurity to the general public. Moreover, act of the petitioners apparently involves

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invoke the such forum for redressal of their grievance, as such, the instant petition is hereby dismissed for want of jurisdiction.

(W.I.B)

Petition dismissed.
