

PLJ 2017 Quetta 31 (DB)

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

BIBI ZAWAR--Petitioner

versus

SESSIONS JUDGE QUETTA and 2 others--Respondents

C.P. No. 252 of 2017, decided on 18.5.2017.

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

---S. 6--Daily light occurrence--Indiscriminate firing--Abduction & murder--Question of--Whether an offence fall within ambit of Section 6 of Anti terrorism Act 1997, it is essential to have a glance over allegations made in FIR, material collected in investigation and surrounding circumstances--Whether ingredients of alleged offence have any nexus with object of case as contemplated under Sections 6, 7 and 8 thereof--Whether a particular act is an act of terrorism or not, motivation, object, design and purpose behind said act is to be seen--Whether said act has created as fear and insecurity in public or in a section of public or community or in any sect, there can be no second opinion that where 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 1997 and shall be triable by a special Court, constituted for such purpose--Case transferred to Special Court.

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Mr. Sher Baz, Advocate for Petitioner.

Mr. Arbab Tahir, Advocate for Respondent No. 2.

Mr. Saleem Baloch, AAG for State.

Date of hearing: 24.4.2017.

JUDGMENT

Zaheer-ud-Din Kakar, J.--Through instant petition by invoking jurisdiction of this Court, the petitioner prays as under:

"It is therefore, in view of the above narrated facts it is respectfully prayed that the case titled as the *State v. Agha Shehr Yar and others* may kindly be transferred from the Court of Sessions Judge, Quetta/Respondent No. 1 to concerned ATC Court by way of inserting the Section 7 ATA in

the FIR No. 4 of 2014 of L.S. Zehri, District Khuzdar in the interest of justice, equity and fair play."

2. Precisely stated facts of the case are that on the report of petitioner, FIR No. 4 of 2014, under Sections 302, 324, 365, 147, 148, 149 PPC, Levies Thana, Zehri was registered with the allegations therein that on 06.2.2014, at about 6:45 a.m. she was present in her house situated at Gut Zehri, meanwhile, Respondent No. 2 along with co-accused persons had attacked upon her house by way of opening firing due to which Bashir Ahmed and Mst. Rubina died at the spot, whereas Fazal Din, Mst. Madina, Abdul Sattar, Mst. Farida and Mst. Taj Bibi sustained injuries. The accused persons forcibly took away her two sons namely Irfan Anwar and Farhaad Anwar.

3. From perusal of the record it appears that prior to the instant petition, the petitioner filed Criminal Transfer Application No. 588 of 2014, before this Court for transfer of the case from the Court of Judicial Magistrate, Khuzdar to any other Court at Quetta. This Court *vide* order dated 20.3.2015 accepted the application in the following manner:

"So, with consent of DAG and Special Prosecutor, the case FIR No. 4 of 2014 lodged with Thana Levies, Zehri Khuzdar pending for the purpose of proceedings under Section 512 Cr.P.C. is transferred to the file of Sessions Judge, Quetta for further transmission of case for the purpose of proceedings under Section 512 Cr.P.C to the Court of Judicial Magistrate here at Quetta. Needless to observe, that further proceedings, i.e. original trial shall also be conducted here at Quetta by the Sessions Judge, Quetta. Thus, the application stands disposed of in above terms."

4. Learned counsel for the petitioner contended that provisions of Section 6 of ATA are fully attracted in this case. Incident was committed in a brutal manner, in which two innocent persons were murdered, whereas five were seriously injured and two sons of the petitioner were also forcibly taken away by the culprits, finally, he prayed for insertion of Section 7 of the Anti Terrorism Act, 1997 (ATA) and transfer of the case to Anti-terrorism Court.

5. Conversely, learned counsel for Respondent No. 2 as well as learned APG vehemently opposed the petition and submitted that the

ingredients of Section 6 of ATA, 1997 are not attracting in this case, hence prayed for dismissal of the petition.

6. We have heard the learned counsel for the parties and have gone through record of the case with their assistance. In order to determine, as to whether an offence would fall within the ambit of Section 6 of the Anti-terrorism Act, 1997, it is essential to have a glance over the allegations made in the F.I.R., material collected during the 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 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 in a section of the public or community or in any sect, there can be no second opinion that where 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. For deciding the instant petition, it is found that as per F.I.R., due to the indiscriminate firing of the accused persons in the house of the complainant (petitioner) resulted in the murder of two persons, causing injuries to five other persons and abduction of two persons fall within the ambit of Section 6 ATA, 1997. Moreover, action of the accused resulted in striking terror and sense of insecurity among the people in a particular vicinity, it amounts to create terror in the area. Therefore, we are of the considered view that the Anti-terrorism Court has exclusive jurisdiction in this case as the action of the accused squarely falls within the ambit of Section 6 of the Act of 1997. Reliance can be placed upon the following judgments of the Hon'ble Supreme Court of Pakistan:

"In the case of *Ch. Bashir Ahmad v. Naveed Iqbal and 7 others* (PLD 2001 SC 521), the Hon'ble Supreme Court has held as under:

8. A person would commit a terrorist act if in order to, or if the effect of his actions will be to strike terror or create a sense of fear and insecurity in the people, or any section of the people". In the instant case as the

facts of the case reveal, the alleged sprinkling of the spirit on the person of the victim was within the boundary walls of the appellant's house. It was not in public and, therefore, the element of Striking terror or creating sense of fear and insecurity in the people, or any section of the people is not made discernible in the FIR and for that matter on the record of the case as a whole. Similarly the perusal of the Schedule to the Act also indicates that the element of striking terror or creation of sense of fear and insecurity in the people or any section of the people by doing an act or thing by using bombs, dynamite or other explosive or inflammable substances etc. is a *sine qua non* for the attraction of the provisions of Section 6 of and the Schedule to the Act (underlining is provided by us for emphasis).

In the case of *Mst. Raheela Nasreen v. The State and another* (2002 SCMR 908), the Hon'ble Supreme Court has held as under:--

- (6) We are afraid, the argument in our considered view is wholly fallacious. In order to determine whether a particular act of the accused for which he is being tried for criminal offence falls within the ambit of any of the provisions of the Act, it is not necessary to record evidence of the witnesses to establish that the said act had, in fact, created terror or feeling of insecurity whereas the question of applicability of any of the provisions of the Act has to be decided by application of mind to the facts alleged in the FIR and other attending circumstances.
- (7) From a bare reading of Section 6(h) of the Act, it is manifest that it is not necessary that the offence as alleged had in fact, caused terror the requirement of the said provision of law could be adequately satisfied if the same was likely to strike terror or sense of fear and insecurity in the people.
- (8) The learned Judges of the High Court came to the conclusion that a Batman who was a trusted person of an army officer if he kills as alleged his master in

connivance with his (master's) wife the same was likely to strike terror or feeling of insecurity among the army officers which reasonings in our view are based on relevant consideration having logical nexus with the relevant law and do not suffer from any legal infirmity."

In the case of *Muhammad Mushtaq v. Muhammad Ashiq and others* (PLD 2002 SC 841), the Hon'ble Supreme Court has held as under:--

"It would thus appear that ordinary crimes are not to be dealt with under the Act. A physical harm to the victim is not the sole criterion to determine the question of terrorism. What is to be seen is the psychological effect produced by the violent action or with the potential of producing such an effect on the society as a whole or a section thereof. There may be a death or injury caused in the process. Thus where a criminal act is designed to create a sense of fear or insecurity in the minds of the general public disturbing even tempo of life and tranquility of the society, the same may be treated to be a terrorist act. There may be just a few killings, random or targeted, resorted to with single mindedness of purpose. But nevertheless the impact of the same may be to terrorize thousands of people by creating a panic or fear in their minds.

- (8) In the present case, we, *prima facie*, find that the occurrence took place during the peak hours of the day on the busy Court Road near the District Courts, Lahore, wherein four person while on their way to attend the Court were allegedly murdered by the use of Kalashnikovs. The cumulative fall-out of the occurrence as to the time, place and manner of the act created a sense of the fear and insecurity in society. The case was, therefore, triable by the Anti-terrorism Court established under the said Act in view of its peculiar facts and circumstances as also the law and order situation prevailing in the country. In the case *Ziaullah (supra)* a similar view as taken by this Court in somewhat similar circumstances."

In the case of *Nazeer Ahmed and others v. Nooruddin and another* (2012 SCMR 517), the Hon'ble Supreme Court has held as under:--

"(3) We have heard the learned Advocate Supreme Court and have perused the record. The learned High Court has examined the material at length and has rightly concluded that the act of the petitioners created sense of insecurity amongst the villagers and did destabilize the public-at-large and, therefore, attracts the provisions of Section 6 of the Anti-terrorism Act. The learned Advocate Supreme Court in support of his contentions has relied upon the judgments reported in the case of *Mohabat Ali v. The State* reported in 2007 SCMR 142 and the case of *Bashir Ahmed v. Muhammad Siddiq*, reported in PLD 2009 SC 11, which are distinguishable on facts. Neither the motive nor intent for commission of the offence is relevant for the purpose of conferring jurisdiction on the Anti-terrorism Court. It is the act which is designed to create sense of insecurity and or to destabilize the public-at-large, which attract the provisions of Section 6 of the A. T., Act, which in the case in hand was designed to create sense of insecurity amongst the co-villagers."

In the case of *Nooruddin v. Nazeer Ahmed and 4 others* (2011 PCr.LJ 1370), the learned High Court of Sindh has held as under:

"16. Examining the case in hand on the above touchstone, we cannot subscribe the view articulated by the learned counsel for the respondent that the case is triable by the Sessions Court only for the reason that it is a case of previous enmity. It is clearly deducible that the offence was committed in the manner, which was enough to create a sense of insecurity or to destabilize the public-at-large and amounts to terrorism as enumerated in Section 6 of the Act."

7. Keeping in view, the *dicta* as laid down in the aforementioned judgments, we have no hesitation to reach at the irresistible conclusion that ingredients of Section 6 ATA are fully attracted in this case. Thus, the petition is allowed with direction to the concerned Investigating Officer to insert Section 7 ATA in F.I.R No. 04/2014 of Levies Thana Zehri and the Sessions case Bearing No. 24 of 2016 pending before the Sessions Judge, Quetta, is hereby transferred to the Court of Anti-terrorism-I, Quetta.

(Z.I.S.)

Petition allowed.