HCJDA 38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Revision No.24470/2023

Aqeel *alias* Kaka, etc. vs The State, etc.

JUDGMENT

Date of hearing:	**21.03.2024.**
Petitioners by:	Ch. Ishtiaq Ahmad Khan, Advocate along with M/s Adnan Ahmad Ch., Zarish Fatima and Mujahid Dasti, Advocates.
State/respondent No.1 by:	Mr. Tariq Siddique, Additional Prosecutor General along with Munir, Inspector and record of the case.
Respondent No.3 by:	Mian Tabassum Ali, Advocate.

Farooq Haider, J:- Through instant revision petition filed by Aqeel *alias* Kaka, Muhammad Hussain, Ali Haider and Mst. Sabiran Bibi {petitioners/accused persons in case arising out of F.I.R. No.1743/2022 dated: 22.06.2022 registered under Sections: 302, 324, 148, 149, PPC read with Section: 7 of the Anti-Terrorism Act, 1997 (subsequently, offences under Sections: 337-A(i), 337-F(iii), 337-F(vi) and 120-B PPC were added during investigation of the case) at Police Station: Shahdra Town, District: Lahore}, following prayer has been made: -

> *"In view of the above submissions, it is, therefore, most respectfully prayed that this petition may kindly be accepted and the impugned order dated 18.03.2023 passed by learned respondent No.2 may kindly be set aside in the interest of justice and the case FIR No.1743/2022 may kindly be transferred from the Anti-Terrorism Court to The Court of Ordinary Jurisdiction in the interest of justice.*
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> *Any other relief, which this Hon'ble Court deems fit and proper may also kindly be awarded to the petitioner."*

2. Brief however necessary facts for decision of this petition are that Muhammad Ijaz Khan (complainant/now respondent No.3 in the instant petition) got registered case *vide* F.I.R. No.1743/2022 (mentioned above) against accused persons including present petitioners; subsequently, he got recorded supplementary statement dated: 24.09.2022 whereby he nominated five more accused persons namely Manzoor *alias* Paa, Sakhawat, Hamid,

Liaqat Ali and Sana Bibi; during investigation of the case, Sarfraz Ahmad, Imtiaz Hussain *alias* Kaka and Imran were declared innocent and thereafter incomplete challan report in the case was prepared and sent to the Court for trial where application under Section: 23 of the Anti-Terrorism Act, 1997 was filed by present petitioners, which was dismissed *vide* impugned order dated: 18.03.2023 passed by learned Judge Anti-Terrorism Court-I, Lahore; relevant portions of said order are hereby reproduced: -

> *"Through application under consideration the petitioners/ accused requested the court for the transfer of the case to the court of ordinary jurisdiction because section 6 & 7 of Anti-Terrorism Act, 1997 do not attract to the case of prosecution and the learned apex court has opined that inspite of grave, shocking, brutal, gruesome or horrifying offence it is not termed as terrorism if it is not designed to create terror amongst the general massive."*
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> *"Perusal of record reveals that when complainant party in the present case after appearing before the court of Rai Nawaz Marth, ASJ Frozewala in case FIR No.524/2020 got registered u/s 302, 324, 109 PPC was on its way the accused made brutal firing upon them due to which Shahid Khan and Sajjad Khan died at the spot whereas Ameer Hamza s/o Muhammad Sajjad died at Mayo Hospital, Lahore. Apart from deceased Malik Kamran and Zawar @ Saddam also received serious injuries at the hands of accused and in order to decide the fate of application filed u/s 23 of Anti-Terrorism Act, 1997 the place of occurrence is very relevant. In this regard not only unscaled site plan prepared by Investigating Officer is part of record but the scaled site plan clearly contained point 'W' the place where four fire shots made by accused hit the court room of Rai Nawaz Marth, learned ASJ Frozewala. The offence committed by accused within the court premises while damaging its wall is a scheduled offence and as per section 12 of Anti- Terrorism Act, 1997 and Para No.13 of judgment relied upon as PLD 2020 SC 61 it clearly exclude the jurisdiction of ordinary court.*
>
> *In view of above as the provisions of section 6 & 7 of Anti-Terrorism Act, 1997 are attracted in this case and only this court has jurisdiction to decide the challan against accused, therefore, application filed u/s 23 of Anti-Terrorism Act, 1997 being devoid of any force stands dismissed."*

3. Learned counsel for the petitioner submits that impugned order is against the law as well as facts of the case, therefore, same is not sustainable in the eyes of law; finally prays for setting aside the impugned order.

4. Learned Additional Prosecutor General and learned counsel for respondent No.3 while supporting the impugned order pray for dismissal of this petition.

5. **Arguments heard and available record perused.**

6. In criminal law, *mens rea* i.e. guilt mind which refers to criminal intent carries the vital importance to determine the nature as well as gravity of the alleged act or omission subject matter of the crime and resultantly deciding the question of jurisdiction also. Almost every crime spreads feelings of insecurity, harassment and fear however quantum of said effect i.e. feelings varies from person to person and area to area e.g. sometime even pallet fired from air gun hitting bird or animal resulting into oozing of the blood, can cause fear to the person who has never seen such episode earlier in his life and not acquainted with firearm weapons as well as their use whereas the person familiar with such events will not take any serious note of it even if assault rifle like Kalashnikov has been used for committing the occurrence, therefore, merely due to magnitude of the effects of the crime, it cannot be termed as "terrorism" falling in the ambit of Section: 6 of the Anti-Terrorism Act, 1997 and punishable under Section: 7 of the Act *ibid*, if it has been committed due to personal enmity/vendetta; in this regard, guidance has been sought from the case of "**GHULAM HUSSAIN and others versus The STATE and others**" (**PLD 2020 Supreme Court 61**); relevant portion from said case law is hereby reproduced: -

> *"15. The resume of our legislative developments in the field of terrorism shows, as already observed in the case of Basharat Ali (supra), that with different laws and definitions of terrorist act or terrorism the emphasis has been shifting from one criterion to another including the gravity of the act, lethal nature of the weapon used, plurality of culprits, number of victims, impact created by the act and effect of fear and insecurity brought about or likely to be created in the society by the action. The last definition of a 'terrorist act' contained in section 6 of the Anti-Terrorism Act, 1997 squarely focused on the effect of fear and insecurity intended to be created by the act or actually created by the act or the act having the potential of creating such an effect of fear and insecurity in the society. It, however, appears that subsequently the legislature did not feel convinced of the aptness or correctness of that definition and resultantly the erstwhile definition of a 'terrorist act' contained in section 6 of the Anti-Terrorism Act, 1997 was repealed and a totally fresh and new definition of 'terrorism' was introduced through an amended section 6 of the Anti-Terrorism Act, 1997. The legislature had probably realized by then that an effect of an act may not always be a correct indicator of the nature of such an act as every crime, especially of violence against person or property, does create some sense of fear and insecurity in some section of the society and a definition of terrorism based upon the magnitude or potential of an effect created or intended to be created or having a potential of creating would necessarily require a premature, speculative and imaginary quantification of the effect so as to determine the nature of the act in order to*

decide about the jurisdiction of a criminal court to try such an act. That surely was an unsure test and the result of such a premature, speculative and presumptive test could vary from court to court and from Judge to Judge reminding a legal scholar of the Star Chamber and the early days of a Court of Equity in England where equity was said to vary with the size of the Chancellor's foot. The new definition of 'terrorism' introduced through the amended section 6 of the Anti-Terrorism Act, 1997 as it stands today appears to be closer to the universally understood concept of terrorism besides being easier to understand and apply. The earlier emphasis on the speculative effect of the act has now given way to a clearly defined mens rea and actus reus. The amended clause (b) of subsection (1) of section 6 now specifies the 'design' and clause (c) of subsection (1) of section 6 earmarks the 'purpose' which should be the motivation for the act and the actus reus has been clearly mentioned in subsection (2) of section 6 and now it is only when the actus reus specified in subsection (2) of section 6 is accompanied by the requisite mens rea provided for in clause (b) or clause (c) of subsection (1) of section 6 that an action can be termed as 'terrorism'. Thus, it is no longer the fear or insecurity actually created or intended to be created or likely to be created which would determine whether the action qualifies to be termed as terrorism or not but it is now the intent and motivation behind the action which would be determinative of the issue irrespective of the fact whether any fear and insecurity was actually created or not. After this amendment in section 6 an action can now be termed as terrorism if the use or threat of that action is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect, etc. or if such action is designed to create a sense of fear or insecurity in the society or the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause, etc. Now creating fear or insecurity in the society is not by itself terrorism unless the motive itself is to create fear or insecurity in the society and not when fear or insecurity is just a byproduct, a fallout or an unintended consequence of a private crime. In the last definition the focus was on the action and its result whereas in the present definition the emphasis appears to be on the motivation and objective and not on the result. Through this amendment the legislature seems to have finally appreciated that mere shock, horror, dread or disgust created or likely to be created in the society does not transform a private crime into terrorism but terrorism as an 'ism' is a totally different concept which denotes commission of a crime with the design or purpose of destabilizing the government, disturbing the society or hurting a section of the society with a view to achieve objectives which are essentially political, ideological or religious. This approach also appears to be in harmony with the emerging international perspective and perception about terrorism. The international perception is also becoming clearer on the point that a violent activity against civilians that has no political, ideological or religious aims is just an act of criminal delinquency, a felony, or simply an act of insanity unrelated to terrorism. This metamorphosis in the anti-terrorism law in our country has brought about a sea change in the whole concept as we have understood it in the past and it is, therefore, of paramount importance for all concerned to

> *understand this conceptual modification and transformation in its true perspective.*
>
> *16. For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act. It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta."*

Similarly, case of "**SADIQ ULLAH and another versus The STATE and another**" (**2020 S C M R 1422**) can also be safely referred and relevant portion of the same is also reproduced hereunder: -

> *3. There are no benign murders nor the aftermaths of violence endured by its victims and anguish suffered by their families can be euphemistically quantified in an empirical gauge, though the magnitude thereof and concomitant loss differently impact the surroundings, inevitably to be gripped by fear and shock, however, the intensity of brutality and loss of life, consequent thereupon, by themselves do not bring a violent act within the contemplated purview of "Terrorism", a distinct phenomena to achieve, through violent means, ends other than settlement of personal scores, therefore, while the tragedy that befell upon the poor soul evokes profound shock and deserves to be appropriately visited, on the strength of evidence, so as to ensure justice to the family, it nonetheless, cannot be equated with "Terrorism" to dock the accused in special jurisdiction, therefore, the case is withdrawn from the Court of Judge ATC-I Peshawar and entrusted to the learned Sessions Judge Peshawar; he shall conclude the trial in jail premises with all convenient dispatch by recording evidence of the remaining witnesses. The Chief Secretary, Khyber Pakhtunkhwa, shall make arrangements of holding of trial in jail premises. The Inspector General of Police, Khyber Pakhtunkhwa, shall ensure safe conduct to the witnesses. The impugned judgments are set aside; petition is converted into appeal and allowed in the above terms."*

Firing in the court premises is triable by Anti-Terrorism Court as per 3rd schedule of Anti-Terrorism Act, 1997, which is hereby reproduced for ready reference: -

"THE THIRD SCHEDULE
(Scheduled Offences)
[See Section 2(t)]

1. Any act of terrorism within the meaning of this Act including those offences which may be added or amended in accordance with the provisions of section 34 of this.

2. Any other offence punishable under this Act.

3. Any attempt to commit, or any aid or abetment of, or any conspiracy to commit, any of the aforesaid offences.]

[2][4. Without prejudice to the generality of the above paragraphs, the Antiterrorism Court to the exclusion of any other Court shall try the offences relating to the following, namely:--

(i) Abduction or kidnapping for ransom;
(ii) use of fire arms or explosives by any device, including bomb blast in a mosque, imambargah, church, temple or any other place of worship, whether or not any hurt or damage is caused thereby; or
(iii) firing or use of explosives by any device, including bomb blast in the **court premises**.]

[1][(iv) Hurt caused by corrosive substance or attempt to cause hurt by means of a corrosive substance; and

(v) Unlawful possession of an explosive substance or abetment for such an offence under the Explosive Substances Act, 1908 (VI of 1908)]"

(***emphasis added***)

However, if *prima-facie,* intention to have firing in or at the court premises is not reflecting from the act constituting crime rather it appears that occurrence was orchestrated to target opponents due to personal enmity outside the court and as a bye product incidentally some bullets hit the outer wall of the court premises or outer wall of court room from distance, then there is absolutely no intention to have firing in the court and in such state of affairs, act constituting the offence/crime irrespective of the huge loss of lives or other things, would not be triable by Anti-Terrorism Court under its 3rd schedule. It is relevant to mention here that **firing in the court** has been mention in 3rd schedule of Anti-Terrorism Act, 1997 for making the case triable by Anti-Terrorism Court whereas "firing near or around i.e. in the surrounding of the court" is not mentioned in Clause 4 (iii) of 3rd Schedule of Anti-Terrorism Act, 1997 and same cannot be added therein **by the court**; in this regard, guidance has been sought from the case of **"DEPUTY DIRECTOR FINANCE AND ADMINISTRATION FATA through Additional Chief Secretary FATA, Peshawar and others versus Dr. LAL MARJAN and others" (2022 S C M R 566)**; relevant portion from Page No.571 of said case law is reproduced hereunder: -

"It is nobody's case that the provisions of the 2009 Act were extended to FATA/PATA by following the aforenoted provisions of the Constitution. As such, the learned High Court

> *could not have extended the application of the 2009 Act, or any Act of Parliament or the Provincial Assembly for that matter, to FATA/PATA on the touchstone of the principle of casus omissus. The said principle categorically provides that, where the legislature has not provided something in the language of the law, the Court cannot travel beyond its jurisdiction and read something into the law as the same would be ultra vires the powers available to the Court under the Constitution and would constitute an order without, jurisdiction. The same would also be against the principle of Trichotomy of Powers upon which the State functions. All three organs of the State have been given specific powers under the law and as such, the said powers cannot be overstepped. We are therefore inclined to hold that the learned High Court in the impugned judgments has travelled beyond its jurisdiction in applying the 2009 Act to the Respondents which action is ex facie erroneous, beyond lawful authority and without jurisdiction.*

Furthermore, case of "**SIRAJUD DIN and another versus ALLAH RAKHA and others**" (**PLD 1960 (W.P.) Lahore 261**) can also be advantageously referred and relevant portion from Page No.264 is hereby reproduced: -

> *"We cannot read into the words of a section, particularly a carefully drafted section, words which are not there……."*

It goes without saying that in special law, dealing with particular subject, courts are required not to depart from its literal construction and it will be narrowly interpreted; in this regard, case of "**WARIS ALI and 5 others versus The STATE**" (**2017 S C M R 1572**) can be safely referred and its relevant portion is reproduced below: -

> *"20. Another cardinal principle for construing a Penal Statute is that if the same transgresses upon the liberty, property and life of the citizens, it shall be so construed and interpreted to preserve such rights and not in a manner to destroy the same, thus, at random application of the provisions of the Special Act to the crimes of ordinary nature like the instant one, would be neither desirable nor appropriate being not permissible under the law. In the case of The State v. Syed Qaim Ali Shah (1992 SCMR 2192) the same principle was laid down by this Court.*
>
> *21. In enactments, meant to deal with particular subject and purposive in nature, the Courts are required not to depart from its literal construction, the same shall be narrowly interpreted. Widening the scope of such Statutes would defeat the legislative intent therefore, indulging in straining by enlarging the scope of the Special Law, intended to cover specified crimes and special object, is not permissible course because the result and object intended to be achieved by the Legislature, shall go waste. Unnecessarily bringing conventional crimes within the mischief provision of the special law may result into chaos and the very object of Article 175 of*

the Constitution and the laws would be defeated besides the clear intent of the Legislature.

22. As has been discussed earlier, Penal Statute and that too of a harsh nature, must be narrowly examined and by no stretch of imagination it shall be given extended meaning to cover crime/crimes, not clearly falling within the ambit of the same. Carrying forward any legal fiction on any other consideration, is not a permissible course in view of the universal principle relating to construction of Statute. The society has already suffered at the hands of the devils and evil minded people, indulging in terrorism and terrorist activities, thus, ordinary citizens, charged for crimes committed due to personal vendetta, irrespective of the consequences, ensuing in the consummation of a crime, shall not be lightly labeled as terrorists on account of the damage caused as it is not a determinative and decisive factor, as the most lethal/sophisticated weapons, fully automatic are conveniently available almost in every part of the country. The use of such weapons, even by a single person would thus cause multiple injuries or even multiple casualties.

The situs of the crime with certain limitations is relevant to bring it within the fold of mischief provision of Special Act, as the offences committed in specified places are squarely mentioned in para-4, clauses (ii) and (iii) which are as follows:-

> *"(ii) Use of fire arms or explosive by any device, including bomb blast in a mosque, imambargah, church, temple or any other place of worship, whether or not any hurt or damage is caused thereby; or*
>
> *(iii) firing or use of explosive by any device, including bomb blast in the court premises."*

Under section 34 of the Special Act, the Legislature has delegated powers authorizing the government to amend the Schedules, so as to add any entry thereto or to modify it, therefore, when the Legislature has specifically authorized the government to make amendment in the Schedule then, the Courts of law are not supposed to interpret the provision of the Special Act in a way by including any other place in the Third Schedule or to exclude any place, specifically mentioned therein because it would amount to encroachment on the power of the government without any justifiable reason, unless and until the provisions of the Third Schedule are struck down by the Court on the ground being violative or ultra vires of the mandatory provision of the Constitution."

In this case, it is own case of the prosecution that accused persons committed the occurrence when victim of the case came out from the court and reached on the road, so, accused persons neither went inside the court premises for committing the occurrence nor made firing upon the victims when they were inside the court premises. It goes without saying that intention or *mens rea* i.e. guilt intention is inferred from the acts, facts and circumstances.

Hence, *prima-facie*, there was no intention of the accused persons to target the court or victims in the court premises. It is not mentioned in the Crime Report (F.I.R.) that accused made firing at the court premises and the fire shots hit wall of the court room or its boundary wall, however, it is claim of prosecution that as per site plan of the place of occurrence, some signs of hitting of bullets at the court premises have been shown but perusal of the site plan reflects that signs of hitting some bullets are shown at the outer wall of the court room situated at the upper storey and at the outer side of the boundary wall of Katchery, Ferozewala. So, by no stretch of the imagination, it cannot be said that firing was made **in the court** or for targeting or hitting the court premises rather it has been clearly mentioned in case diary No.107 dated: 23.03.2023 written by Muhammad Saleem, Inspector (Incharge Investigating) in the case that there was previous litigation and grudge (رنجش) between complainant party and accused persons. So, this occurrence took place outside the court premises and due to previous enmity/vendetta, hence, occurrence neither constitutes offence of terrorism as defined under Section: 6 of the Anti-Terrorism Act, 1997 and punishable under Section: 7 of the Act *ibid* nor falls in the Schedule 3 of the Act, *ibid* for the purpose of trial by Anti-Terrorism Court. Thus, Anti-Terrorism Court, Lahore fell into legal error while holding through impugned order that this case is triable by Anti-Terrorism Court.

7. In view of what has been discussed above, impugned order is not sustainable in the eyes of the law; therefore, same is hereby set-aide and case is ordered to be sent to the court of plenary jurisdiction i.e. Sessions Court, Lahore for trial in accordance with law, expeditiously. Instant revision petition stands **accepted/allowed**.

(AALIA NEELUM)
JUDGE

(FAROOQ HAIDER)
JUDGE

Announced in open Court on **28.03.2024**.

(AALIA NEELUM)
JUDGE

(FAROOQ HAIDER)
JUDGE

APPROVED FOR REPORTING.

Kashif