

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT

Criminal Appeal No.121/2020

Raja Nasir Hanif

versus

Chairman, Proscription Review Committee, Islamabad & 4 others

Appellant by: Syed Muhammad Ali Bokhari, Advocate.

Respondents by: Mr. Hasnain Haider Thaheem, State Counsel.
Arsalan Haider, RDM, DC Office, Islamabad.
Asif Riaz, S.I., P.S. Bhara Kahu, Islamabad.

Date of Decision: 24.07.2020.

MOHSIN AKHTAR KAYANI, J: Through this criminal appeal, the appellant Raja Nasir Hanif has assailed the order of the Chairman, Proscription Review Committee, dated 23.06.2020, together with the notification dated 19.01.2019, whereby appellant's name has been notified in the 4th Schedule of the Anti Terrorism Act, 1997 under Section 11EE by the Chief Commissioner Office, Islamabad Capital Territory, Islamabad (Respondent No.4).

2. Brief facts referred in the instant appeal are that appellant's name has been notified in 4th Schedule of Anti Terrorism Act, 1997 by the Chief Commissioner, Islamabad Capital Territory (Respondent No.4) while exercising his power conferred under sub-Section 1 of Section 11EE of the Anti Terrorism Act, 1997 read with Islamabad Capital Territory Administration Order (P.O. No.18/1980). The appellant feeling aggrieved thereby filed a review in terms of Section 11EE(3) of the Anti Terrorism Act, 1997 before the Chairman, Proscription Review Committee, which was notified by the Federal Government to decide such kind of cases, however the said Committee has rejected the review application of the appellant vide order dated 23.06.2020 with the following decision.

<i>Name</i>	<i>Views/Comments</i>
(ii) Raja Nasir Hanif s/o Muhammad Hanif	As per report of the Senior Superintendent of Police, Islamabad that the accused Raja Nasir Hanif s/o Muhammad Hanif is found involved in the following criminal cases registered:

- i. Case FIR No.78 dated 06.03.2013 u/s 380/420/468/471/34 PPC P.S. Bharakahu, Islamabad.
- ii. Case FIR No.278 dated 19.08.2013 u/s 337-H(ii)329/148/149/ PPC P.S. Bharakahu, Islamabad.
- iii. Case FIR No.303 dated 06.09.2013 u/s 337-H(0/148/149/ PPC P.S. Bharakahu, Islamabad.
- iv. Case FIR No.304 dated 06.09.2013 u/s 324/452/148/149 PPC P.S. Bharakahu, Islamabad.
- v. Case FIR No.156 dated 30.05.2008 u/s 447/511/148/149 PPC P.S. Bharakahu, Islamabad.
- vi. Case FIR N0.253 dated 27.12.2006 u/s 353/186/506(ii)/148/149 PPC P.S. Bharakahu, Islamabad,
- vii. Case FIR No.211 dated 28.09.2002 u/s 337-A(i), 337-A(i1)/148/149 PPC P.S. Bharakahu, Islamabad.
- viii. Case FIR No.273 dated 04.10.2001 u/s 365/34 PPC P.S. Secretariat , Islamabad,
- ix. Case FIR No.334 dated 08.05.2001 u/s 11 Hadd P.S Waris Khan, Rawalpindi.
- x. Case FIR No.123 dated 23.04.2014 u/s 302/324/148/149 PPC P.S. Bharakahu, Islamabad.

It has been informed by the Special Branch & S.H.O. P.S. Bhara Kahu that accused is an active member of land grabbers/Kabza Mafia, hold bad reputation in the area. He is also found involve in continuously violating the SOPs of ATA 1997. Fresh FIR has also been registered against him for violating the SOPs (Section 11-E) of 4th Schedule ATA 1997. His recent activities is a continues threat and it has also been reported that he is also involve in charging ransom from different people as well and there is greater apprehension that he might involve in such cases in future as well.

DECISION:

Hence, all the members of District Intelligence Committee unanimously opined that his named may not be deleted from the list of 4th Schedule of Anti Terrorism Act, 1997.

3. Learned counsel for appellant contends that the earlier notification issued by the Chief Commissioner, Islamabad, dated 19.01.2019, notifying appellant's name in 4th Schedule of the Anti Terrorism Act, 1997 is illegal as the recommendations given by District Magistrate and endorsed by District Intelligence Committee (DIC) are not in accordance with the record, even the Chairman, Proscription Review Committee has not considered the record in its true perspective, although it is in the report of the police department that appellant has been acquitted in ten (10) criminal cases registered against him, acquittal orders of which are available on record but same were not considered, rather appellant has been declared as an active member of land grabber/Qabza Mafia, which otherwise does not fall within the definition of terrorism in terms of Section 6 of the Anti Terrorism Act, 1997 and even the requirement of Section 11EE has not been fulfilled in this case, as such the order is liable to be set aside in terms of appellate jurisdiction to protect the rights of the appellant.

4. Conversely, learned State Counsel along with Sub-Inspector of P.S. Bhara Kahu and representative of Deputy Commissioner Office contend that appellant is a land grabber and is involved in number of cases, who is actively creating sense of insecurity in the vicinity of Bhara Kahu due to his involvement in land grabbing and Qabza Mafia having bad reputation in this regard; that due to conduct of appellant the peace and tranquility of the area has been disturbed and as such, his name has rightly been placed under 4th Schedule of the Anti Terrorism Act, 1997.

5. Arguments heard, record perused.

6. Perusal of record reveals that the Chief Commissioner, Islamabad, vide notification dated 19.01.2019, has notified the name of appellant in 4th Schedule of the Anti Terrorism Act, 1997 under Section 11EE, based on the reports of SSP, Islamabad, which was recorded by District Magistrate and endorsed by DIC in their meeting held on 09.01.2019. A review in terms of Section 11EE(3) of the Anti

Terrorism Act, 1997 was filed by the appellant before the Chairman, Proscription Review Committee, notified and authorized by the Federal Government for the Islamabad Capital Territory, whereby the review was rejected mainly on the following reasons:

- a) As per SSP Report he is found involved in 10 criminal cases of heinous nature.
- b) Special Branch and S.H.O. P.S. Bhara Kahu submitted the report that accused is an active member of land grabber / Qabza Mafia.
- c) Appellant holds bad reputation in the area.
- d) He is also found involved in violating the SOPs of the Anti Terrorism Act, 1997
- e) Fresh FIR has been registered against him for violating the SOP (Section 11E of the 4th Schedule of the Anti Terrorism Act, 1997)
- f) His recent activities are considered to be threat and he is also involved in charging ransom from several people.
- g) There is greater apprehension that he may involve in such cases in future.

7. While considering the above reasons, which have been made basis of rejection of review filed by the appellant, I have confronted the appellant regarding the present status of alleged 10 criminal cases registered against him, whereby the appellant contends that he has already been acquitted in all criminal cases referred above and in this regard he has placed certified orders of acquittal before this Court, perusal of which revealed that he has been acquitted by the competent court on the basis of compromise, even he submitted a report of P.S. Bhara Kahu, whereby his acquittals have been recorded in the police record in all pending cases, except the case registered in violation of SOP of Section 11E of the 4th Schedule of the Anti Terrorism Act, 1997.

8. The S.I. of P.S. Bhara Kahu in attendance has not disputed the record position and conceded that appellant has been acquitted of all the ten (10) cases referred in the impugned order, however, he contends that appellant is a known land grabber and majority of complainants have reached to the compromise due to his repute in the locality.

9. While considering this position, I have gone through the provisions of Section 11EE of the Anti Terrorism Act, 1997, which is reproduced as under:

11EE. Proscription of Person.

- (1) *The Federal Government may, by order published in the official Gazette, list a person as a proscribed person in the fourth Schedule on an ex-parte basis, if there are reasonable grounds to believe that such person is –*
 - (a) *concerned in terrorism;*
 - (b) *an activist, office bearer or an associate of an organization kept under observation under section 11D or proscribed under section 11B; and*
 - (c) *in any way concerned or suspected to be concerned with such organization or affiliated with any group or organization suspected to be involved in terrorism or sectarianism or acting on behalf of, or at the direction of, any person or organization proscribed under this Act.*

10. The above referred provisions highlight certain requirements and prerequisites by law for the purpose of declaring a person as “proscription”, whereby he should be found involved in terrorism or proved as an activist, office bearer or the associates of organizations and declared proscribed under Section 11(b) of the Act or affiliated with such kind of group or organization suspected to be involved in terrorism or sectarianism, even the State has to demonstrate that appellant is involved in case of terrorism defined in Sections 6 and 7 of the Anti Terrorism Act, 1997, but all these requirements have not been highlighted by the respondent side.

11. As such, there is not a single document or details provided by the SSP, Islamabad or S.H.O. P.S. Bhara Kahu before this Court or before the Chairman, Proscription Review Committee or in their report that the appellant is member of any proscribed organization or is actively involved in terrorism or sectarianism

or a banned outfit or he is involved in terrorist funding, hence the minimum requirements of law have not been observed while placing the name of appellant in 4th Schedule at the first instance.

12. The onus is upon the respondent/State or law enforcement agency to justify their point of view for fulfilling the requirements of law strictly with reference to the concept of terrorism, failing which, order for placing the name of the appellant in 4th Schedule is considered nullity in the eyes of law. In this case, the State agencies are not able to justify the *prima facie* case or requirements, which made the very basis of passing of ex-parte order dated 19.01.2019 and as such, rights conferred to the citizen in terms of Articles 4, 9 and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 have been violated by the actions or the mode and manner in which the impugned order has been passed.

13. The purpose of legislation in terms of Section 11EE of the Anti Terrorism Act, 1997 was to oversee the persons involved in anti-social, subservice activities and endangering public security of the State. Reliance is placed upon 2017 YLR Note 264 (Zulfiqar Ali Gohar Alvi v. Government of Punjab, etc.). Even otherwise, the concept of terrorism, which is the prerequisite of Section 11EE has to be seen in case reported as PLD 2018 SC 178 (Government of Punjab, etc. v. Muhammad Rafiq, etc.), whereby it was held that:

“The ultimate object and purpose of such act is to terrorize the society but in ordinary crimes committed due to personal vendata or enmity, such elements are always missing so the crime committed only due to personal revenge cannot be dragged into the fold of terrorism and terrorist activities.”

14. Similar view has also been taken by the apex Court regarding the support of terrorism in case reported as PLD 2020 SC 61 (Ghulam Hussain, etc. vs. The State). Hence, the placement of appellant’s name in 4th Schedule has not been proved to be justified under the law as the prerequisites have not been observed by the respondent side in a proper manner.

15. In view of above reasons and while relying upon cases reported as 2013 P.Cr.LJ 312 Lahore (Kh. Mureed Hussain vs. Government of Punjab) and 2017 YLR Note 264 (Zulfiqar Ali Gohar Alvi vs. Government of Punjab) the appellant has succeeded in his claim as respondents have infringed the rights of the appellant in terms of Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973 as his right of dignity has been damaged, which itself is against the concept of meaningful life, as such, mere registration of cases does not fall under the concept of terrorism, especially when the cases are intra-parties having no connection whatsoever with anti-state activities, even the DIC has neither observed the requirements of law nor taken into account the record, whereby the appellant has already been acquitted in all criminal cases, before giving recommendation for placement of appellant's name in the 4th Schedule of the Anti Terrorism Act, 1997.

16. For what has been discussed above, the instant criminal appeal is hereby ALLOWED and impugned order dated 23.06.2020, passed by the Chairman, Proscription Review Committee, together with the notification dated 19.01.2019 are hereby SET ASIDE. The respondent authorities are directed to remove the name of appellant from 4th Schedule of the Anti Terrorism Act, 1997, under intimation to this Court.

(MOHSIN AKHTAR KAYAN)
JUDGE

Khalid Z.