

JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Criminal Appeal No.103/2020.

Fazal Inam Sabir **Vs.** **Chairman, Proscription
Review Committee, Islamabad etc.**

Appellant by: Mr. Adil Aziz Qazi, Mr. Haseeb
Hassan and Malik Abdur Rehman,
Advocates.

Respondents by: Mr. Hasnain Haider Thaheem, State
Counsel. Tariq Hussain D.D (Admin),
ICT. Muhammad Idrees, S.I P.S
Sihala, Islamabad.

Date of Hearing: **01.07.2020.**

MOHSIN AKHTAR KAYANI, J:- Through this criminal appeal, the appellant has assailed the order dated 08.08.2019, passed by the District Magistrate Islamabad/Chairman District Intelligence Committee, whereby review application filed by the appellant to remove his name from the fourth schedule of Anti-Terrorism Act, 1997 has been dismissed.

2. Brief facts referred in the instant appeal are that name of the appellant has been notified in the fourth schedule U/S 11-EE of ATA, 1997 vide notification dated 19.01.2019, passed by Chief Commissioner Islamabad being Chairman District Intelligence Committee, whereas the appellant filed review application against the said order but the same was dismissed vide impugned order dated 08.08.2019.

3. Learned counsel for the appellant contends that name of the appellant has been placed in fourth schedule in terms of section 11-EE without adverting to its pre-requisites defined in section 11-B and 11-D, whereas no such requirement has been observed while passing the impugned order; that respondents authority has only referred different criminal cases lodged on the complaint of different individuals to justify their stance for placing name of the appellant in fourth schedule, however, the appellant has already been acquitted from majority of the cases and only one case is pending, wherein the appellant is not nominated accused.

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4. Conversely, learned State Counsel contends that the appellant is involved in six criminal cases and is known land grabber in the area of village Sihala; that name of the appellant has been referred in fourth schedule on the recommendation of Proscription Committee comprising of SP, IB, ISI with the recommendations of District Magistrate and as such the reputation of the appellant in the area is as land grabber and he used to extend funds to the militant groups/Anti State Organizations.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that the appellant has been notified in fourth schedule in terms of section 11-EE of Anti Terrorism Act, 1997 vide notification dated 19.01.2019 based on the reports of SP, which were recommended by District Magistrate and endorsed by District Intelligence Committee in the meeting held on 19.01.2019. The said order has been assailed through review application U/S 11-EE(3) of ATA, 1997 but the review has been turned down by the competent authority mainly on the ground that six following cases have been registered against the appellant:-

(i) Case FIR No.68, dated 26.07.2014, U/S 447/427/506/109 PPC P.S Nilor, Islamabad.

(ii) Case FIR No.44, dated 22.05.2015, U/S 447/337-H(ii)/148/149/511 PPC, P.S Nilor, Islamabad.

(iii) Case FIR No.144, dated 12.05.2014, U/S 447/148/149/506-ii, 511 PPC, P.S Sihala, Islamabad.

(iv) Case FIR No.79, dated 21.04.2016, U/S 447/148/149/506-ii, 511 PPC, P.S Sihala, Islamabad.

(v) Case FIR No.347, dated 21.12.2017, U/S 447/148/149/506-ii PPC, P.S Sihala, Islamabad.

(vi) Case FIR No.208, dated 12.05.2018, U/S 324/447/148/149/337-H(ii) PPC, P.S Sihala, Islamabad.

7. While considering the above background, I have gone through the record and confronted learned State Counsel and the officials in attendance with the record produced by the appellant, whereby he has been acquitted in case FIR Nos.144/14, 68/14, 347/17, 208/18, while in case FIR No.79/16, the appellant has been declared innocent and his pre-arrest bail application has been withdrawn, whereas in case FIR No.544/18, dated 16.12.2018, U/S 302/324/148/149 PPC and 7 ATA, the appellant has not been nominated directly with any role and the trial is yet to be

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concluded. S.I in attendance has not disputed the record position and conceded that the appellant has been acquitted from number of criminal cases, however, he contends that the appellant is known land grabber and majority of the complainants have compromised due to his repute in the locality. While considering this position, I have gone through the provisions of section 11-EE, which is reproduced as under:-

"11-EE. Security of good behavior.---(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 associates of an organization kept under observation under section 11D or proscribed under section 11B;

(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.

Explanation.- The opinion concerning reasonable grounds to believe may be formed on the basis of information received from any credible source, whether domestic or foreign."

8. While considering the above requirements settled by the law for the purpose of proscription of a person, the State has to demonstrate that the appellant is involved in case of terrorism defined in sections 6 & 7 of ATA, 1997 or being an office bearer, activist or associates with organization notified in terms of section 11-B for proscription of organization under the Act by the Federal Government or he being member of the said organization is under observation in terms of section 11-D or he is involved in terrorism or sectarianism, however, no such case has been demonstrated by the respondents side, even not a single report or document has been placed on record to substantiate that the appellant is member of proscribed organization or banned outfit or is involved in terrorist funding, therefore, minimum requirement of law has not been observed while placing name of the appellant in fourth schedule.

9. It is duty of the Federal Government as well as District Intelligence Committee while placing name of an individual in the proscribed person list in terms of section 11-EE, that a report may be gathered from credible source to justify

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the relationship of a person with any terrorism related activity or being member of proscribed organization, the onus is upon the respondents/State or the law enforcement agencies to justify their point of view, failing which, order for placing name in the fourth schedule is considered nullity in the eye of law. In this case the state agencies are not able to justify the prima facie case, which made the very basis of ex-parte order dated 19.01.2019 and as such the rights conferred to a citizen in terms of Articles 4, 9 & 10-A of the Constitution of Islamic Republic of Pakistan, 1973 have been violated by the actions, the mode and manner in which the impugned order has been passed. The purpose of legislation in terms of section 11-EE of the Act was to oversee the persons involved in anti-social and subversive activities endangering public safety and security of the State. Reliance is placed upon 2017 YLR Note 264 (Zulfiqar Ali Gohar Alvi vs. Government of the Punjab and 11 others). Even otherwise, the concept of terrorism, which is pre-requisite of section 11-EE has to be seen in the light of PLD 2018 SC 178 (Province of Punjab and another vs. Muhammad Rafique and others), 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."

Similar, view has been taken by the Apex Court regarding scope of terrorism in PLD 2020 SC 61 (Ghulam Hussain and others vs. The State and others). Hence, the placement of name of the appellant in fourth schedule has not been proved as pre-requisites have not been fulfilled. Similarly, the State Bank of Pakistan has further initiated different actions for freezing of bank accounts of the appellant without considering section 11-O of ATA, 1997, which specifically provides the concept of freezing of the property or the money owned or controlled wholly by the proscribed organization or the person but the said order is depending upon the pre-requisite if followed in terms of section 11-EE. It is not the case of the respondents that the appellant is member of proscribed organization, raising funds in terms of section 11-H of the Act and as such there is no record appended with the reports submitted by the respondents in this regard, hence, freezing of bank accounts under the garb of order passed u/s 11-E of the Act is not justiciable unless the person,

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whose accounts have been frozen was given opportunity of hearing as it amounts to denial of his right to life in terms of Article 9 of the Constitution of Islamic Republic of Pakistan, 1973.

10. In view of above reasons while relying upon 2013 P Cr. L J 312 [Lahore] (Khawaja Mureed Hussain vs. Government of the Punjab and 6 others) & 2017 YLR Note 264 (Zulfiqar Ali Gohar Alvi vs. Government of the Punjab and 11 others), the appellant has succeeded in his claim as the respondents have violated rights of the appellant in terms of Article 14 of the Constitution of Islamic Republic of Pakistan, 1973, whose right of dignity has been violated, which itself is against the concept of meaningful life as such mere registration of cases does not fall within concept of terrorism especially when the cases are intra parties having no connection whatsoever with Anti State Activities, even the District Intelligence Committee has not observed the requirement of law before giving recommendations for placement of appellant's name in the fourth schedule of ATA, 1997.

11. For what has been discussed above, the instant appeal is allowed, impugned order dated 08.08.2019 is hereby set aside. The respondents Authorities are directed to remove the name of the appellant from the fourth schedule of Anti Terrorism Act, 1997 and defreeze bank accounts of the appellant immediately under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam