

JUDGMENTSHEET  
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.  
(JUDICIAL DEPARTMENT)

**Crl. Appeal No. 86 of 2020**

Farukh Imtiaz Khokhar  
*Versus*  
Government of Pakistan, etc.

Petitioner by: Syed Zahid Hussain Bukhari & Tanveer Iqbal  
Advocates.  
Respondents by: Ch. Abdul Jabbar, AAG, Zohaib Hassan  
Gondal with Qasim Niazi DSP/SDPO,  
Asjad Mehmood SHO, Mumtaz Baig Sub-  
Inspector & Qasim Khan- Inspector.  
  
Date of Hearing: 26.08.2020.

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**Ghulam Azam Qambrani, J.:-** Through this Criminal Appeal, the appellant seeks setting aside of impugned notification No.2 (1212)-Law/2018-4270-A Dated 14<sup>th</sup> November, 2018 issued by the Chief Commissioner, Islamabad Capital Territory and un-dated order rejecting review petition.

2. Brief facts, as per contents of appeal are that the appellant is law abiding citizen and believes in honest living. The appellant's name has been listed in the Fourth Schedule of the Anti-Terrorism Act, 1997 vide Notification No.2 (121)-Law/2018-4270-A dated 14<sup>th</sup> November, 2018 by the Chief Commissioner, Islamabad Capital Territory. The appellant made representation against the above said Notification passed by the Chief Commissioner, Islamabad Capital Territory before respondent No.1, but inspite of lapse of statutory period for the decision of the representation/review same was not decided. Petitioner challenged the impugned Notification through Writ Petition No. 851/2019, which was disposed-of vide order dated 29.05.2019. The appellant approached the respondent and made request for decision of petition/review, but ultimately vide un-dated order, the Chief Commissioner, ICT, Islamabad, rejected the review petition/ representation. Feeling aggrieved, the appellant has challenged the legality and validity of the said Notification through this appeal.

3. Learned counsel for the appellant has contended that the impugned Notification is absolutely illegal, against law and result of political motivation; that the appellant is resident of Dhoke Gangal, Khokhar House, Police Station Airport, Rawalpindi, and his vote is registered in Rawalpindi and the impugned Notification of Chief Commissioner, ICT is without jurisdiction; that the impugned order has been passed after filing the review petition by the appellant, but no date is mentioned in the impugned order and that no independent findings have been given by the Chief Commissioner-ICT on the order of review, it is only based on observations of the District Intelligence Committee; that the question of residence of the appellant in the jurisdiction of P.S Airport, Rawalpindi, has been considered by the Hon'ble Lahore High Court, Rawalpindi Bench in W.P No. 1049-Q/2011 vide order dated 04.05.2011 and the name of appellant has been listed in the fourth schedule maliciously on account of political rivalry and appellant is being victimized illegally and maliciously. Learned counsel for the appellant has further contended that the appellant was acquitted in FIR No. 643/2012 dated 17.08.2012 under Sections 109,201,302,427,148,149 PPC registered at P.S Airport, Rawalpindi by the learned Additional Sessions Judge, Rawalpindi vide order dated 25.09.2018; that the inclusion of name of appellant has been made with ulterior motives, whereas the appellant is not involved in any anti-State activity. Further contended that as per Section 24-A of the General Clauses Act, 1897, the public functionaries must exercise their jurisdiction in good faith for advancement of objective of legislation and in a reasonable manner. Learned counsel for the appellant has finally prayed for acceptance of instant appeal and setting aside of impugned notification No.2 (121) Law/2018-4270-A dated 14<sup>th</sup> November, 2018 passed by the Chief Commissioner, ICT.

4. Conversely, learned AAG assisted by the learned State Counsel have opposed the contention of learned counsel for the appellant and has contended that name of the appellant was placed in the Fourth Schedule of Anti-Terrorism Act, 1997 under Section 11-EE by the Notification dated 14.11.2008 on the recommendations received from the District Magistrate, ICT and the SSP, Islamabad that the appellant is involved in heinous crimes, illegal activities and carries bad reputation in the area; that various criminal cases are registered against the appellant at police stations of Islamabad and Rawalpindi; that as per direction of this Court vide order dated 29.05.2019 passed in W.P.No.851/2019, opportunity of personal

hearing was provided to the appellant and his case was forwarded to the District Magistrate, ICT for placing his case before the District Intelligence Committee for examination of all the relevant record against the appellant; that the District Intelligence Committee found that eleven criminal cases had been registered against the appellant at different police stations of Islamabad and Rawalpindi. Further submitted that the appellant is an active member of proscribed organization "Lashkar-e-Jhangvi"; that he is a member of land grabbers and qabza mafia; that the appellant failed to furnish surety bond for his good behaviour; that in pursuance of the order of this Hon'ble Court, the appellant was provided personal hearing on 25.11.2019, but the District Intelligence Committee shown deep concern and apprehension that there exists possibility of violation and breach of peace, therefore, in the light of recommendations of the District Intelligence Committee, it was decided that name of the appellant may not be deleted from the Fourth Schedule of Anti-Terrorism Act, 1997.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record with their able assistance.

6. Perusal of record shows that the name of appellant is listed in the Fourth Schedule of Anti-Terrorism Act, 1997 vide Notification No. 02 (121)-Law/2018-4270-A, dated 14.11.2018, on ex-parte basis, on the recommendations of the District Magistrate ICT and SSP, Islamabad on the ground that the appellant is involved in heinous crimes, illegal activities and various criminal cases registered at different police stations of Islamabad and Rawalpindi. Record further shows that this Court in W.P No.851/2019 decided on 29.05.2019 issued a direction to the Chief Commissioner, Islamabad to decide the pending review petition of the appellant within thirty days with a speaking order, after hearing the appellant. In pursuance of the said order the appellant was summoned on 25.11.2019, but in the light of the recommendations of the District Intelligence Committee in its meeting dated 12.09.2019, it was decided that name of the appellant may not be deleted from the Fourth Schedule of Anti-Terrorism Act, 1997.

7. The name of the appellant has been placed in Fourth Schedule of Anti-Terrorism Act, 1997 in terms of Section 11-EE vide Notification dated 14.11.2018. The provision of Section 11-EE empowers the Federal Government to enlist a person as proscribed person in Fourth Schedule on ex-parte basis if the Chief Commissioner-ICT feels that there are

reasonable grounds to believe that the appellant is involved in the offences mentioned in Section 11-EE of the Anti-Terrorism Act, 1997.

8. In the instant case, the respondents have failed to provide any valid reason or justification for placing the name of the appellant in Fourth Schedule, whereas the only evidence available with the respondents is that there are many criminal cases registered against the appellant, but perusal of the record reveals that the appellant has not been convicted in any of the criminal case, rather in most of the cases, he has been acquitted of the charge, therefore, there is no justification with the respondents for placing the name of the appellant in the Fourth Schedule of Anti-Terrorism Act, 1997. For ready reference, the provisions of Section 11-EE 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 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 11-D or proscribed under Section 11-B, 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.*

***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.*

9. From the above, the purpose of proscription of a person, the State has to demonstrate that he is involved in cases under Section 6 & 7 of ATA, 1997 or being an office bearer, activist or associate with an 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. In the instant case, the respondents have failed to place on record any material to show that the appellant is a member of the proscribed organization or involved in

terrorist funding. The respondents have failed to justify any ground which made the basis of ex-parte notification dated 14.11.2018 for placing the name of the appellant under Section 11-EE in Fourth Schedule of Anti-Terrorism Act, 1997. In the case reported as "Province of Punjab and another Vs Muhammad Rafiq and others" [PLD 2018 SC 178] it has been held as under:-

*"The ultimate object and purpose of such act is to terrorize the society but in ordinary crimes committed due to personal vendetta 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."*

10. In the case reported as "Ghulam Hussain and others Versus the STATE and others" (PLD 2020 SC 61), similar view has been taken by the Hon'ble Supreme Court of Pakistan which is reproduced hereunder:-

*"In cases of this nature, "mens-rea" is essentially with an object to accomplish the act of terrorism and carrying out terrorist activities to overawe the State, the State Institutions, the public at large, destruction of public and private properties, make assault on the law enforcing agencies and even at the public at large. The ultimate object and purpose of such acts is to terrorize the society or to put it under constant fear while in ordinary crimes committed due to personal vengeance/blood feud or enmity, the element to create fear or sense of insecurity in the society, public by means of terrorism is always missing."*

11. In view of the above, the pre-requisites for placing the name of the appellant in the Fourth Schedule have not been fulfilled and it seems that the impugned Notification is unreasonable and has been passed without application of mind, whereas, under Section 24-A of the General clauses Act, the public functionaries are bound to exercise jurisdiction in good faith and in a reasonable manner. Reliance in this regard is placed upon the cases reported as "Muhammad Nadeem Arif and others Versus Inspector-General of Police, Punjab, Lahore and others" (2011 SCMR 408), "Capital Development Authority through Chairman and another Versus Mrs. Shaheen Farooq and another" (2007 SCMR 1328) and "Mian Ayaz

Anwar Versus Federation Of Pakistan through Secretary Interior and 3 others" (PLD 2010 Lah 230).

12. Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 stipulates that every citizen, wherever he may be, and every other person for the time being within Pakistan has an inalienable right to enjoy the protection of law and to be treated in accordance with law. In particular, no action detrimental to his life, liberty, body, reputation or property shall be taken except in accordance with law, and Article 9 commands that no person shall be deprived of life or liberty save in accordance with law whereas, Article 10 provides safeguards as to arrest and detention. Articles 9 and 10 are contained in Part-II, Chapter-I of the Constitution which relates to Fundamental Rights. In "Ismaeel v. The State" (2010 SCMR 27), the Hon'ble Supreme Court of Pakistan observed that the rights guaranteed under Articles 4, 9 and 10 are sacrosanct and jealously guarded by our Courts.

13. Keeping in view the facts and circumstances of the instant case, this appeal is allowed, the impugned Notification dated 14.11.2018 is hereby set-aside with a direction to the respondents authorities to remove the name of the appellant from the Fourth Schedule of Anti-Terrorism Act, 1997 immediately under intimation to this Court.

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

Announced in open Court on this 4<sup>th</sup> day of September, 2020.

**JUDGE**

**"Approved for Reporting."**

S.Akhtar