

**JUDGMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Crl. Appeal No. 120/2020**

**Raja Razi-ur-Rehman**

*Versus*

**Chairman Proscription Review Committee, Islamabad, etc.**

**Petitioner by:** Syed Muhammad Ali Bokhari, Advocate.

**Respondents by:** Mr. Hasnain Haider Thaheem, State Counsel.  
Zahid, S.I, P.S. Bhara Kahu, Islamabad.

**Date of Decision:** 06.10.2020.

**MOHSIN AKHTAR KAYANI, J:-** Through this criminal appeal, the appellant has assailed the notification dated 19.01.2019 and order dated 23.06.2020, passed by Chairman Proscription Review Committee, whereby name of appellant has not been removed from fourth Schedule of Anti-Terrorism Act, 1997.

2. Learned counsel for the appellant contends that appellant is businessman by profession and has never involved in anti state activities, nor having any relationship whatsoever with any banned organization, outfit or group which is involved in sectarian terrorism or anti state activist; that as such placement of name of appellant in the fourth schedule is illegal; that all the cases which have been referred by the Chairman Proscription Review Committee in the impugned order dated 23.06.2020 have been settled, whereby appellant has been acquitted from all the cases except last case registered on 01.05.2020 vide FIR No.235, P.S. Bhara Kahu, Islamabad for allegedly committing violation of fourth Schedule of ATA, 1997; that impugned notification as well as impugned order has been

passed in mechanical fashion in order to settle the issues of FATF, which has nothing to do with the exercise launched by District Magistrate, Islamabad.

3. Conversely, learned State counsel alongwith police official contends that appellant is involved in number of criminal cases and as such his credential discloses his involvement being member of land grabber/qabza mafia in the area, even he is involved in ransom cases and his name has rightly been placed in the fourth Schedule of ATA, 1997.

4. Arguments heard, record perused.

5. From the perusal of record, it reveals that appellant was notified by Chief Commissioner, Islamabad in fourth Schedule of ATA, 1997 under section 11 EE of the ATA, 1997 on the basis of reports of SSP, Islamabad vide order dated 19.01.2019.

6. The matter has been placed before the Proscription Review Committee, which has also been turned down vide impugned order dated 23.06.2020 and as such appeal U/S 11 EE(3a) of the ATA, 1997 has been preferred.

7. In order to settle the proposition, it is necessary to reproduce the initial notification, which is as under:-

**NOTIFICATION**

*No.2(121)-Law/2018:335 The Chief Commissioner, Islamabad Capital Territory, Islamabad exercising the powers conferred on him by Sub-Section (1) of Section 11 EE of the Anti Terrorism Act, 1997 (XXVII of 1997), read with Islamabad Capital Territory Administration Order (P.O. No.18 of 1980) and all other enabling powers in that behalf, hereby notifies placement of the name **Raja Razi ur Rehman s/o Abdul Rehman r/o Kund, Phulgran, Bharakau, Islamabad** in FOURTH SCHEDULE of Anti Terrorist Act 1997 Under Section 11 EE, based on the reports of Senior Superintendent of Police, Islamabad which were recommended by District Magistrate and endorsed by District Intelligence Committee (DIC) in its meeting held on 09.01.2019.*

**BY ORDER OF THE CHIEF COMMISSIONER  
ISLAMABAD CAPITAL TERRITORY**

8. The said notification if considered as gospel truth it reveals that the name of appellant has been placed in the fourth schedule of ATA, 1997 on the basis of reports submitted by SSP, ICT, therefore, the police official of P.S. Bhara Kahu has been confronted with the said report, whereby details of following criminal cases have been provided:-

| S. No. | Case No. | Date     | Offence                                | P.S.       | Court Order           |
|--------|----------|----------|--|------------|-----------------------|
| 1      | 98       | 08.04.14 | 447/427/147/19 PPC                     | Bhara Kahu | Acquitted             |
| 2      | 102      | 11.05.06 | 148/149/506 PPC                        | Bhara Kahu | Acquitted on 15.02.10 |
| 3      | 166      | 23.08.06 | 447/511/148/149 PPC                    | Bhara Kahu | Acquitted on 21.12.09 |
| 4      | 228      | 14.08.08 | 324/148/149 PPC                        | Bhara Kahu | Acquitted on 29.01.10 |
| 5      | 103      | 10.05.10 | 392/452/427 PPC                        | Bhara Kahu | Acquitted             |
| 6      | 107      | 14.05.10 | 148/149/306(ii)/452/427 PPC            | Bhara Kahu | Acquitted             |
| 7      | 184      | 16.06.11 | 324/337/148/149 PPC                    | Bhara Kahu | Acquitted on 25.02.13 |
| 8      | 187      | 20.06.11 | 324/148/149 PPC                        | Bhara Kahu | Acquitted             |
| 9      | 300      | 06.11.10 | 324/337-F(iv) PPC                      | Bhara Kahu | Acquitted on 13.06.11 |
| 10     | 278      | 19.08.13 | 148/149/337-H(ii) PPC                  | Bhara Kahu | Acquitted on 28.11.16 |
| 11     | 483      | 26.11.18 | 447/511/506/427/148/149 PPC            | Bhara Kahu | On bail               |
| 12     | 543      | 24.12.18 | 337-G/337-D/149/337-F(iii)/324/149 PPC | Bhara Kahu | Acquitted             |
| 13     | 404      | 30.08.19 | 3324/506(ii)/337-A(ii)/34 PPC          | Bhara Kahu | Acquitted             |
| 14     | 235      | 01.05.20 | 11EE, ATA                              | Bhara Kahu | pending               |

9. While considering the above-mentioned details, it reveal that only two cases are left unsettled, therefore, it is necessary to consider the entire matter with reference to the provision of ATA, 1997, whereby Section 11EE was enacted by the Legislature in order to provide necessary prevention from the terrorism, sectarian violence and as such Federal Government is empowered to enlist a person as proscribed person in fourth Schedule on an *ex-parte* basis, if there are reasonable grounds to believe that such person is related to terrorism activities or an activist, office bearer of an associate of an organization against whom observation order has been passed in terms of Section 11D or is a member of proscribed organization in terms of Section 11B of the ATA, 1997.

10. While considering the above referred pre-requisites, learned State Counsel as well as police official in attendance have been confronted as to whether appellant is a member of any such proscribed organization, banned outfit or is

declared as terrorist, whereby they have conceded that the appellant is involved in cases of land grabbing and as such he is not member of any banned outfit or involved in religious sectarianism.

11. While considering the above-mentioned facts and circumstances, there is nothing available on record against the appellant to consider him as member of proscribed organization in terms of Section 2(q), 11(b) of the ATA, 1997, nor any such case has been registered in this regard. 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). Similarly, the concept of terrorism has to be considered as pre-requisite of Section 11 EE of ATA, 1997 as held in PLD 2018 SC 178 (Province of Punjab and another Vs. Muhammad Rafique and others).

12. Similar view has also been taken by the Apex Court in celebrated judgment reported as PLD 2020 SC 61 (Ghulam Hussain and others Vs. The State and others), wherein it has been held that:-

*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.*

13. Hence, the placement of name of appellant in fourth schedule has not been proved from circumstances referred on record. Even otherwise all the claims referred in police report regarding pendency of different criminal cases demonstrate that appellant has been acquitted in twelve cases out of fourteen cases registered against him, whereas last case has been registered due to alleged violation of fourth schedule of ATA, 1997, therefore, only one case which is left against the appellant is intra parties qua their private issues having no nexus with any anti state activities. As such District Intelligence Committee has not

considered the law before giving recommendations for the placement of appellant's name in the fourth Schedule of ATA, 1997, nor the appellant is a proscribed person or office-bearer or an associate of a proscribed organization or an organization suspected to be involved in terrorism or sectarianism, which are the key factors to be demonstrated by the respondents as held in PLD 2020 Lahore 378 (Muhammad Ilyas Ghuman Vs. Government of Punjab). Therefore, the very basis of notification as well as impugned order is not justiciable on record.

14. Keeping in view the above position, instant appeal is allowed, notification dated 19.01.2019 as well as impugned order dated 23.06.2020 are hereby set aside and respondents are directed to remove the name of appellant from fourth Schedule with immediate effect.

(MOHSIN AKHTAR KAYANI)  
JUDGE

/ahid