

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Jamal Khan Mandokhail
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

Crl. Petition No. 29-K of 2022

(On appeal from the judgment of the High Court of Sindh Karachi dated 19.01.2022 passed in Spl. Criminal A.T. Appeal No. 100 of 2020)

Zain Shahid

...Petitioner

Versus

The State and another

...Respondents

For the Petitioner: Khawaja Naveed, ASC

For the State: Mr. Saleem Akhtar, Addl. PG

Date of Hearing: 29.12.2023

JUDGMENT

Jamal Khan Mandokhail, J.- Brief background of the case is that an order No. DIGP/CTD/IR/2796 dated 26 March, 2020 was received by ASI Muhammad Hashim (complainant), which is reproduced as under:

"Zain Shahid (petitioner) resident of Nazimabad No. 3 Karachi, belonged to a proscribed organization, Daesh. He is not only a member of the proscribed organization but also collects donation and funding for the proscribed organization and the aforementioned money is potentially used in carrying out terror activities across the country through which the terrorists are provided financial aid and promotion and strengthening of terrorism or fear".

Pursuant thereto, an FIR was registered by the complainant at Police Station, CTD Karachi, District Central Karachi on 26.03.2020 against the petitioner under sections F(i)(ii), 11-H, 11-

N, of the Anti-Terrorism Act, 1997 ("**ATA of 1997**") and Muhammad Sarfraz, Inspector of Police was appointed as the investigating officer ("**I.O.**"). It is the prosecution's case that on 18.06.2020, when the IO was on patrolling duty, he received a call from a spy informer that the petitioner, wanted accused in the instant FIR, along with his companion are busy in collection of funds for proscribed organization *Daesh* and are available near Annu Bhai Park, Nazimabad No.6, Karachi. Consequently, the I.O. arrested the petitioner, whereas, his companion made good his escape. It is alleged that the petitioner was holding one funding book in his hand on which *Daesh Pakistan Fund Raising* was mentioned and having an amount of Rs.1500/-, which were recovered from his possession, through a recovery memo. On completion of the investigation, a police report along with evidence was submitted before the Trial Court, on the basis whereof, charge was framed against the petitioner under the afore-mentioned sections. The Trial Court convicted and sentenced the petitioner under section 11-F(i) and 11-H(i)(ii) of the ATA of 1997, to suffer imprisonment for six months and ten years respectively. The petitioner filed an appeal before the High Court of Sindh at Karachi, which was dismissed through the impugned judgment dated 19.01.2022, hence, this petition for leave to appeal.

2. Arguments heard and have perused the record. Under the criminal administration of justice, a criminal case is initiated upon registration of an FIR and a police officer is appointed as an I.O. to undertake a formal investigation into the complaint of breach of law. If the I.O. finds that there is no sufficient evidence or reasonable grounds of suspicion to justify the forwarding of a person in custody to a Magistrate, the I.O. by exercising power under section 169 of the Code of Criminal Procedure ("**Cr.P.C.**") release him on his executing a bond with or without sureties. If the I.O. finds that there is sufficient evidence or reasonable grounds of suspicion in support of the allegations, he shall forward a police report under section 173 of the Cr.P.C. known as

Challan, within the stipulated period, along with the person under custody to a Magistrate empowered to take cognizance of the offence. The Trial Court then initiates proceedings in a manner, provided by Chapter XXII-A of the Cr.P.C. Section 265-D of the said Chapter of the Cr.P.C. provides that *if, after perusing the police report or, as the case may be, the complaint, and all other documents and statements filed by the prosecution, the court is of opinion that there is ground for proceeding with the trial of the accused, it shall frame in writing a charge against the accused.* Framing of charge is the foundation of trial, with a purpose and object to enable accused to know the exact nature of allegations and the offences with which he is charged, so that he is given reasonable opportunity to prepare his case and defend himself. Similarly, it enables the prosecution to produce relevant evidence in support of its case against the accused in order to prove the charge. Framing of proper charge is, therefore, significant for the court concerned to be cautious regarding the real points in issue, so that evidence could be confined to such points and to reach a correct conclusion.

3. Section 221 of the Cr.P.C. has provided an elaborate procedure for framing of charge. It requires that all material particulars as to time, place, as well as specific name of the alleged offence, if any; the relevant law, its applicable section(s), sub-section(s) and clause(s) in respect of which the offence is said to have been committed, shall be mentioned in the charge. Where any particular section of law with which a person is intended to be charged contains several parts, the relevant part of that section which depicts from the police report and the material available on record, should be mentioned therein. It is the responsibility of the Trial Judge to take all necessary and possible steps to ensure compliance of law with regard to framing of proper and unambiguous charge. Steps should also be taken to explain the charge to the accused to a possible extent, enabling him to fully understand the nature of allegations against him. If necessary ingredients of the offences with which the accused is

charged, are not mentioned in the charge, or it is framed in an incomplete, defective or vague manner, it might mislead the accused, which would be a failure of justice. It is, however, to be noted that every omission in a charge cannot be regarded as material illegality or irregularity, unless the accused is in fact misled by such error or omission and it has occasioned a failure of justice, as provided by section 225 of the Cr.P.C.

4. In the case in hand, the petitioner was charged under sections 11-H, 11-N, and 11-F(i) & (ii) of the ATA of 1997. Out of these sections, section 11-H of the ATA of 1997 requires detailed elaboration and better understanding; therefore, the same is reproduced herein below:

11-H. Fund Raising: (1) *A person commits an offence if he---*

- (a) *Invites another to provide money or other property, and*
- (b) *intends that it should be used or has reasonable cause to suspect that it may be used, for the purpose of terrorism [or by a terrorist organization concerned in terrorism]*

(2) *A person commits an offence if-----*

- (a) *he receives money or other property, and*
- (b) *intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism [or by a terrorist or organization concerned in terrorism]*

(3) *A person commits an offence if he-----*

- (a) *provides money or the property, and*
- (b) *knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism [or by a terrorist or organization concerned in terrorism].*

(4) *In this section a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration."*

Legislative intent is clear and unambiguous that clauses (a) and (b) of every subsection of the said section are conjunctive. The circumstances described in each subsection constitute offence only, if a person does both acts described in clauses (a) and (b) in the same transaction. Absence of any act as enumerated in clauses (a) and (b) shall not constitute an offence. Moreover, clauses (b) of sub-sections (1) (2) and (3) consist of two parts:

“firstly, if a person, intends that money or other property should be used for the purpose of terrorism, or by a terrorist or by an organization concerned in terrorism; or

secondly, if a person has reasonable cause to suspect that the money or other property may be used for the purpose of terrorism, or by a terrorist or by an organization concerned in terrorism.

The first part relates to the willingness, plan or design of a person that the money or other property received, should be used for the said purpose. As far as reasonable cause to suspect used in second part of clauses (b) of every subsection is concerned, it means that the accused has a sensible suspicion, based upon his observation of evidence, professional training, if any or experience, that the money or other property he receives or provides, may be used for the purpose of terrorism, or by a terrorist or by an organization concerned in terrorism. The belief must be based upon a set of facts, circumstances or actions to prove whether a reasonable person would have come to the same conclusion, and cannot just be a suspicion. The requirement that there exists objectively assessed cause for suspicion focuses attention on what information the person had, suspecting that the money might be used for terrorist activities. Under such circumstances, the informer is under legal compulsion to disclose to the police regarding the intent or suspicion of a person that he is dealing in the money or property for terrorist activity, enabling

the I.O. to collect evidence in support of the accusations¹ and submit report under section 173 of Cr.P.C. Thereafter, the person if charged under the said section has to demonstrate that money or other property with which he was dealing, was never intended to be used, or has no reasonable cause to suspect that it may be used for the purpose of terrorist activities. In the instant case, the Trial Court framed charge against the accused on the basis of the FIR, police report and material attached thereto, in the following manner:

*“That you above named accused, resident of House No. 12/04 A-B near Shalimar Park Nazimabad No.3, Karachi are the member of Proscribed organization of terrorist namely Daish and also belong and work for such organization on 18-06-2020, spy informer to police that accused is collection Chanda so police upon such information directly reached at Jumma Masjid Nazimabad, No.4 Anu Bhai Park Nazimabad No.6 Karachi, whereupon the pointation of Spy informer, at about 1530 hours, you accused were arrested and disclosed your name as Zain Shahid S/o Shahid Kamal, whereas your companion made his scape (sic) good from the spot, whose name was later on disclosed by you as Muhammad Atif S/o Hafeez Javed, at the time of your arrest police, recovered one receipt boot (sic) (consists upon serial No. 2001-2004, in which serial No. 2001-2008 are registered and the rest of receipts are non-registered upon the name of banned organization Daish with Chanda landing (sic) of Rs: 1500 and one blue ball pen. Thereby, you have committed offence of land (sic) raising and being member of presented (sic) organization, pursuable U/S 11-H, 11-N, and 11-F(i) (ii) of ATA 1997, with the cognizance of this court. **(Emphasis supplied)***

And I hereby direct that you be tried by this court for the above said charge. This the 09th Day of July, 2020.”

5. The Trial Court while framing the charge, did not specify as to which of the sub-clause of section 11-H of the ATA of 1997 was applicable in the facts and circumstances of the present case. There is no evidence on the record to suggest that the petitioner was guilty of an offence either (a) invites another to provide

¹ Reliance is placed on [2018] UKSC 36.

money or other property, he receives money or other property, provides money or other property; and (b) intended that it should be used or has reasonable cause to suspect that it may be used for the purpose of terrorism or by a terrorist or by an organization concerned in terrorism. The FIR, the police report and the other material available on the record were insufficient for the Trial Court to frame charge against the petitioner under any of the clauses of section 11-H of the ATA of 1997, yet defective and vague charge was framed under the stated offences, without mentioning in detail the purported act of the petitioner, which constitutes an offence. This is a classic example of defective charge, which had misled the petitioner. In absence of relevant information and evidence to *prima facie* constitute an offence, it was incumbent upon the Trial Court to have refrained itself from framing of charge against the petitioner. The fact remains that there was lack of ingredients of any of the subsections of section 11-H of the ATA of 1997, the prosecution continued to produce irrelevant evidence in this behalf. The witnesses produced by the prosecution did not establish the commission of an offence, but still the petitioner was held guilty of offences under sections 11-H(i) and (ii) of the ATA of 1997 and was sentenced for a period of ten years by the *fora* below, without specifying the sentence separately for each subsection. This act of the Trial Court has seriously prejudiced the petitioner by convicting him for an offence, which was not committed by the petitioner, nor was it mentioned in the charge framed against him, hence, it is a failure of justice.

6. Another important aspect of the case is that the FIR was registered upon an information received by the complainant from DIG CTD, but it too did not disclose commission of the offence under section 11-H of the ATA of 1997, against the petitioner at the relevant time. Rather it was just a presumption and apprehension of the DIG that the petitioner belonged to a proscribed organization *Daesh*, and collects donations and funding for the said organization and the said money is

potentially used in carrying out terrorist activities across the country. There is no detail in the FIR as to the date, time, place and manner of collecting such money by the petitioner, nor his intention or any reasonable cause on his behalf to suspect that the amount shall be or may be used for terrorist activities. The said order did not disclose the source or circumstances, which resulted into apprehension of the DIG. It is a fact on the record that before registration of the FIR, the petitioner's name was included in Fourth Schedule to the ATA of 1997 and he was regularly appearing before the concerned police. The purpose of placing name of the petitioner in Fourth Schedule was to put a check upon him. Had he been indulged in any criminal activity, an FIR could have been registered against him under the relevant provision of law for any of his specific act, but the needful was not done for the reason that the concerned police officials did not find him involve in any such activity. The allegation emerged from the charge against the petitioner is that when he was apprehended by the I.O. on 18 June 2020, he was having a collection book with a title of *Daesh* along with the money recovered from him. Be that as it may, had the prosecution considered it an act of terrorism, it could have registered a separate FIR, but instead, the I.O. continued to investigate the matter upon the FIR, already registered, which was not a proper course.

7. Besides, in the FIR, in the police report, the documents attached therewith and the evidence available on the record, there is nothing to establish that the petitioner was busy in collecting the money, nor was there any allegation with regard to his intent that money recovered from him was the outcome of the donation he collected, and was to be used or has reasonable cause to suspect that it may be used for the purpose of terrorism or by a terrorist or by an organization concerned in terrorism. Admittedly, neither the DIG nor any officer of DIG's office participated in the investigation nor did they appear before the Trial Court as a witness, to substantiate the contents of the FIR. The allegation of the prosecution contained in the police report as

well as in the charge framed by the Trial Court is that *at the time of your (petitioner's) arrest police, recovered one receipt book (sic) (consists upon serial No. 2001-2004, in which serial No. 2001-2008 are registered and the rest of receipts are non-registered upon the name of banned organization Daish with Chanda landing (sic) of Rs: 1500 and one blue ball pen. Thereby, you have committed offence of land (sic) raising and being member of presented (sic) organization, pursuable U/S 11-H, 11-N, and 11-F(i) (ii) of ATA 1997, with the cognizance of this court.* The witnesses produced by the prosecution tried to support the report submitted by the I.O. against the petitioner. Before the court as well, they did not allege that the petitioner belongs to or professes to belong to a proscribed organization as provided by section 11-F of the ATA of 1997. Similarly, the witnesses did not disclose before the Court that the petitioner received the money with an intention that it should be used or has reasonable cause to suspect that it may be used for the purpose of terrorism or by a terrorist or organization concerned in terrorism. From their statements, no offence under section 11-F or under any subsection of section 11-H of the ATA of 1997 is made out.

8. Without prejudice to above, even otherwise, it is alleged that the petitioner was arrested having a donation book on which, *Daesh* was printed and leaves of it contained his signature, along with an amount of Rs.1500/- were recovered from him. Admittedly, the petitioner did not sign any leaf of the book in presence of the witnesses. Moreover, no leaf of it having the alleged signatures of the petitioner was sent to the forensic laboratory for obtaining expert's opinion to verify the signatures. Under such circumstances, relying upon such a weak evidence will result into injustice. The case against the petitioner was initiated upon a spy information, but such information was not reduced into writing. Fair play demands that spy information should be reduced into writing in order to safeguard innocent persons against false implication. The manner in which the petitioner is involved in the case, is not free from doubt. We have

noticed in number of cases that police arrest or harass innocent persons for ulterior motives or on the basis of suspicion, on the pretext of terrorism, without any solid or cogent evidence. Keeping in view the gravity and seriousness of the offences, the prosecution is required to produce tangible and high quality evidence to prove the offence, in order to get conviction of a person charged, which is lacking in this case. The Trial Court as well as the learned Judges of the High Court have failed to consider the material available on the record and did not apply the law discussed herein above, in its true perspective, hence reached a wrong conclusion by convicting the petitioner. Under such circumstances, the judgments of the Trial Court and that of the High Court are not sustainable.

These are the reasons of our short order dated 29.12.2023, which is reproduced herein below:

"For reasons to be recorded later, this petition is converted into an appeal and allowed. The impugned judgment dated 19.01.2022 passed by High Court of Sindh, Karachi, in Spl.Crl.A.T. Appeal No.100/2020 and the judgment dated 20.07.2020 passed by Judge, Anti-Terrorism Court No. XII Karachi in Special Case No. 169/2020 are set aside. The appellant is acquitted of the charge framed against him. He shall be released forthwith, if not required in any other case."

Judge

Judge

Judge

29.12.2023

Karachi

K.Anees, Waqas Ahmad, L.C./[☆]

"APPROVED FOR REPORTING"