IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE YAHYA AFRIDI

CRIMINAL PETITION NO. 230 OF 2019 AND CRIMINAL MISCELLANEOUS APPLICATION NO. 301 OF 2019
(On appeal against the judgment dated 21.02.2019 passed by the High Court of Sindh, Bench at Sukkur in Criminal Miscellaneous Application No. D-998 of 2018)

Ali Gohar, etc. : ***Petitioners***

Versus

Pervaiz Ahmed, etc. : ***Respondents***

For the Petitioners	:	Sardar Muhammad Latif Khan Khosa, Sr. ASC Assisted by: M. Naeem-ur-Rehman Bhutta, Advocate Mr. Suzain Khattak, Advocate Syed Mehmood Gillani, Advocate Mr. Ghulam Murtaza, Advocate Ch. Akhtar Ali, AOR
For respondent No. 1	:	Mr Faisal Siddiqui, ASC Assisted by: Ms. Sheza Ahmed, Advocate Mr. Haider Imtiaz, Advocate
For respondents No. 2 & 3:	:	Syed Iqbal Hussain Gillani, ASC
For the State	:	Dr. Faiz Shah, Prosecutor-General, Sindh Mr. Zafar Ahmed Khan, Additional Prosecutor-General, Sindh Ms. Tanseer Yaqoob, Additional Prosecutor-General, Sindh
Dates of Hearing	:	19.05.2020, 20.05.2020 & 21.05.2020

JUDGMENT

YAHYA AFRIDI, J. – Ali Gohar, Sikandar and Abdul Sattar, the present petitioners have challenged the impugned judgment dated 21.02.2019 passed by the High Court of Sindh, ordering the trial arising out of Crime No. 20 of 2018 under sections 302, 504, 109, 114, 148, 149 of Pakistan Penal Code, 1890 **("PPC")** read with sections 6 & 7 of the Anti-Terrorism Act, 1997 **("Act")** registered at Police Station 'A' Section, Mehar, District Dadu **("FIR N0.20")** to be tried by the learned Anti-Terrorism Court and not the ordinary criminal court under the Criminal Procedure Code, 1898 **("Cr.P.C.")**, and thereby reversing the order dated 13.11.2018 passed by the learned Anti-Terrorism Court **("ATC")** transferring the trial of the case to the regular criminal court under the enabling provisions of Cr.P.C.

Factual background

2. Before we consider and address the valuable contentions of the learned counsel for the parties, it would be important to note the essential yet relevant events leading to the instant petition. The said events are rather chequered, and to contextualise the same, are narrated in chronological order, as follows:-

Date	Particulars of the Events
18.01.2018	Pervaiz Ahmed son of Karam Ullah Chandio lodged a report at Police Station 'A' Section, Mehar, District Dadu, stating that his father Karam Ullah Chandio, his two brothers namely Mukhtar Ahmad and Kabir Hussain had been

	murdered, alleging Ali Gohar, Ghulam Murtaza, Sikandar Khan and Ghulam Qadir to be the assailants, whereas Buhran Khan was attributed the role of final instigation to the assailants at the place of occurrence and also the joint role of conspiracy to murder with Sardar Khan. The motive for the crime was attributed to questioning the authority of the Sardar of the Chandio tribe, namely Sardar Khan. On the same day, Mst. Dur Bibi lodged a crime report No. 21 in Police Station 'A' Section, Mehar, District Dadu, reporting the death of her husband namely Ghulam Qadir at the hands of Pervaiz Ahmed and six others.
29.06.2018	On a challenge made by Pervaiz Ahmed through Crl. Misc. Application No. D-179 of 2018 before the High Court of Sindh, Sardar Ahmed Khan Chandio and Burhan Chandio, who was released by the Investigating Officer and their names were placed in column No. 2 of the *Challan*, were directed to join the investigation, as accused.
29.06.2018	Pervaiz Ahmed moved Criminal Miscellaneous Application No. D-187 of 2018 challenging the interim pre-arrest bail granted to Sardar Ahmed Khan Chandio and Burhan Chandio before the High Court of Sindh. The learned High Court *vide* order dated 29.06.2018 recalled the bail order granted to Burhan Chandio while maintaining the same granted to Sardar Ahmed Khan Chandio.
13.09.2018	Burhan Chandio and Sardar Ahmed Khan

	Chandio challenged the decision of the High Court of Sindh in Criminal Misc. Applications No. D-179 and D-187 of 2018 before this Court, which was decided in the following terms: "After hearing the learned counsel for the parties, a consensus has been arrived at between the parties that the impugned orders of the learned High Court dated 29.06.2018 passed in Crl. Misc. Application No. D-187/2018 and order dated 27.06.2018 passed in Crl. Misc. Application No. D-179 of 2018 are set aside. Similarly, both the Orders dated 24.02.2018 passed by the learned Judge, Anti-Terrorism Court, Naushehro Feroze (one relating to report under Section 173, Cr.P.C. and the other relating to release of Burhan Cahndio) are also set aside. The matter shall be deemed to be pending before learned Judge, ATC, to whom the case has been transferred who shall consider all matters pending before it as raised by the learned counsel for the parties and the State and decide the same without being influenced by any earlier observation made by the learned Judge, ATC or by the learned High Court by way of the impugned orders. 3. Both the above cases are disposed of in the above terms."
17.09.2018	In compliance with the service effected upon the accused in case FIR No. 20 of 2018, the learned ATC provided to the accused all the documents, as per requirements of section 265-C, Cr.P.C.
27.10.2018	The ATC records to have taken the oath, as per requirements under section 16 of the Act.
13.11.2018	The ATC after providing an opportunity of hearing to all the parties, *inter alia*, decided that the offence reported in case FIR No. 20 does not fall within the definition of "terrorism" under section 6 of the Act, and thereby, invoking its jurisdiction under section 23 of the Act ordered the transfer of the case to be tried by an ordinary criminal court under Cr.P.C., and not under the enabling provisions of the Act.
21.02.2019	Pervaiz Akhtar complainant invoking the inherent jurisdiction of the High Court under

	section 561-A, Cr.P.C. challenged the order dated 13.11.2018 passed by the ATC which was positively considered. The High Court set aside the order of the ATC dated 13.11.2018 directing that that trial in case FIR No. 20 of 2018 to be tried by the ATC and not the ordinary criminal court. What prevailed upon the High Court to decide so, was explained in para-11of its judgment in terms that: "11. In FIR of the present case, it is clearly disclosed by the applicant that the private respondents and others were having grudge against the deceased on account of formation of 'Tamoondari Council' (Council of Elders) seemingly to give an end to hegemony of their Sardar/Chief (Sardar Khan Chandio) and he in order to satisfy such grudge, arranged for attack upon the complainant party whereby three innocent persons lost their lives. The manner in which the private respondents and others have acted ***prima facie*** was not to settle some score or personal enmity with the complainant party but seems to leave a message to general public or to say the Chandio Community thereby conveying them the lethal consequences, if someone is found to be involved in formation of 'Tamoondari Council' (Council of Elders) against their Sardar/Chief. Such object ***prima facie*** was/is appearing from date, time and place of the incident, which the private respondents and others have chosen for committing the alleged offence, which obviously created a sense of insecurity and terror not only amongst the inhabitant of the neighbourhood/ locality/society, but amongst the entire Chandio Community, therefore, the act on the part of private respondents and others obviously was falling within the ambit of Section 6 of the Anti-Terrorism Act, 1997."
At present	The accused have not been Charged by the ATC in case FIR N0.20

Legal Submissions of learned counsel for the parties

3. The worthy counsel for the petitioner very vehemently contended that the High Court lacked the inherent jurisdiction provided to it under section 561-A, Cr.P.C. to set aside the order

passed by the ATC before framing of charge by the said court[1]; that the High Court erred by not applying the correct principle in determining whether the offence reported in case FIR No. 20 fell within the mischief of the term “terrorism”, as contemplated under section 6 of the Act and expounded in the recent pronouncements of this Court[2]; and that it was the guaranteed right of the petitioners as ordained under Article 4(1) of the Constitution of the Islamic Republic of Pakistan, 1973 (**“Constitution”**)to be tried under the ordinary penal law than to face the harsh rigor provided under the special law[3]. The worth Prosecutor General Sindh supported the above contentions of the learned counsel for the present petitioners.

4. In rebuttal, the worthy counsel for the respondent/complainant in case FIR No. 20 very forcefully argued that the High Court had inherent jurisdiction under section 561-A, Cr.P.C. to entertain any challenge made to an order made by a trial court even before framing of charge[4]; that the offence reported in case FIR No. 20 fell within the mischief of the term “terrorism”, as provided under the enabling provisions of the Act[5]; that the admitted facts of the present case, undoubtedly brought the case within the purview of "political" or/and "ideological" terrorism; that as the trial court had not taken "cognizance" of the case, it could

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1 **Shahnaz Begum Versus The Hon'ble Judges of Sindh** (PLD 1971 SC 677) **Muhammad Samiullah Khan Versus The State** (PLD 1963 SC 237) **and Muhammad Ali Versus Additional IG** (PLD 2014 SC 753)**.**

2 **Ghulam Hussain v. The State** (PLD 2020 SC 61)

3 **Waris Ali and 5 others v. The State** (2017 SCMR1572) and **The Province of Punjab v. Muhammad Rafiq and others** (PLD 2018 SC 178)

4. **Hidayatullah and others v. The State** (2006 SCMR 1920), **Hussain Ahmad v. Ms.Irshad Bibi and others** (1997 SCMR 1503), **Muhammad Sharif and 8 others v. The State and another** (1997 SCMR 304), **Arif Ali Khan and another v. The State and 6 others** (1993 SCMR 187) and **Muhammad Ali v. Additional I.G., Faisalabad and others** (PLD 2014 SC 753)

5 **Ghulam Hussain v. The State** (PLD 2020 SC 61)

not transfer the case to an ordinary criminal court within the contemplation of section 23 of the Act; and that when faced with two versions relating to its jurisdiction, courts ought to delay the decision thereon till sufficient evidence is produced by the parties to render a decision[6]; and finally that the respondent/complainant in case FIR No. 20 would be prejudiced, if at this early stage, a decision is rendered on the jurisdiction of ATC and transferring the case to an ordinary criminal court, and later the ordinary criminal court would be unable to transfer the case back to ATC, in case definite and clear evidence is brought on the record to bring the case within the purview of "terrorism" as provided in the Act.

Objection to the inherent jurisdiction of High Court

5. We shall commence with addressing the jurisdictional challenge made by the learned counsel for the present petitioners to the High Court exercising its inherent powers under section 561-A, Cr.P.C. in setting aside the order passed by the ATC in transferring the case to an ordinary criminal court under section 23 of the Act.

6. Let us consider the various legal remedies available to the present respondent/ complainants of FIR No.20, or for that matter, an aggrieved party to any order of ATC to challenge the transfer order passed by the ATC: to begin with, the aggrieved party is to consider the available remedies provided in the Act; and if none is provided, may seek the same under the Cr.P.C.; and still failing to

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6 **Malik Tariq Ayub and anothervs.The State and 5 others** (2018 P.Cr.LJ 1719), **SunderJakhranivs**. **Haji Muhammad Noor and another** (2014 P.Cr.LJ 43), **Muhammad Sharif vs.Judge, Anti Terrorism Court and 5 others** (2012 YLR 2448), **Mati-ur-Rehmanvs.Anti-Terrorism Court, Faisalabad and another** (2008 MLD 840) and **Nadeem Buttvs**. **Special Court Constituted under Anti-Terrorism Act, 1997 (presided by SardarMashkoor Ahmed), Camp at Dharampura, Lahore and another** (2000 SCMR 1086).

find any remedy, may finally approach the constitutional jurisdiction of the High Court under Article 199 of the Constitution.

7. Now, to the facts of the present case, section 25 of the Act provides the remedy of an Appeal only against a "final" judgment of the ATC resulting in conviction or acquittal of the accused. An order passed under section 23 of the Act, not being "final" in view of the express provision of section 25, could not be assailed by the aggrieved party in the appellate remedy provided under the Act. This would then lead the aggrieved party to seek its remedy under the revisional or inherent jurisdiction of the High Court provided under Cr.P.C, if available. To examine such prospects for the aggrieved party, we must review the relevant provisions empowering the High Court to exercise its revisional and inherent jurisdiction under Cr.P.C. The same read as follows:

> "**435. Power to call for records of inferior Courts**.(1) The High Court or any Sessions Judge or District Magistrate, or any Sub-divisional Magistrate empowered by the [Provincial Government] in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court [and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.
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> [Explanation: All Magistrates, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection.]
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> **439. High Court's powers of revision. (1)** In the case of any proceeding the record of which has been called for by itself 6[****] or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.
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> (2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

> (3) Whether the sentence dealt with under this section has been passed by a Magistrate 7[***] the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Magistrate of the first class.
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> [(4) Nothing in this section shall be deemed to authorize a High Court--
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> (a) to convert a finding of acquittal into one of conviction; or
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> (b) to entertain any proceedings in revision with respect to an order by the Sessions Judge under section 439-A.]
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> (5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.
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> (6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction".
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> "**561-A. Saving of inherent power of High Court.** Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

Inherent Jurisdiction

8. In order to contextualize the objection, so raised by the petitioners, and the response thereto by the respondents, we would first discuss the inherent jurisdiction of the High Court, as provided under section 561-A, Cr.P.C. The contours of this jurisdiction of the High Court were extensively discussed by this Court in its decision rendered in **Shahnaz Begum v. the Hon'ble Judges of the High Court of Sind and Balochistan and another (PLD 1971 SC 677)** wherein it was in essence laid down that inherent jurisdiction of a High Court under section 561-A, Cr.P.C. spanned over the judicial orders and not orders passed or steps taken during an investigation of a case by the police under the Cr.P.C. It was explained in terms that:

> "If an investigation is launched *mala fide* or is clearly beyond the jurisdiction of the investigating agencies concerned then it may be possible for the action of the investigating agencies to be

> corrected by a proper proceeding either under Article 98 of the Constitution of 1962 or under the provisions of section 491 of the Criminal Procedure Code, if the applicant is in the latter case in detention, but not by invoking the inherent power under section 561-A of the Criminal Procedure Code. ... ...
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> It will be observed that the power given thereby can be invoked to give effect to any order under the Code to prevent an abuse of the process of any Court or otherwise to secure the ends of justice. The ends of justice necessarily means justice as administered by the Courts and not justice in the abstract sense or justice administered by agencies other than Courts. The words "otherwise to secure the ends of justice", have to be read along with the earlier objects mentioned in this section and must have some co-relation with them and it is in this sense that this Court in the case of **M.S. Khawaja v. The State** (PLD 1965 SC 287) opined that the ends of justice to secure which the inherent power may be invoked "have reference to the purposes which the judicial process is intended to secure, and it is difficult to include actions or investigating agencies within the scope of judicial process"."

9. On the other hand, in **Bahadur and another v. The State and another (PLD 1985 SC 62)** this court drew a distinction between administrative and judicial functions of the magistrate under Cr.P.C., and came to the conclusion that, while passing an order of cancellation of a criminal case, the magistrate exercises administrative powers, thus not functioning as a court. Therefore, such an order was not amenable to revisional jurisdiction. The opinion of the Court was expressed in terms that:

> "Criminal Procedure Code contains no definition of Court nor does the Penal Code. In section 20 of Penal Code "Court of Justice" is defined as "a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially". This definition is of avail for the purposes of Criminal Procedure Code as subsection (2) of section 4 thereof provides "all words and expressions used herein and defined in the Pakistan Penal Code, and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code". The High court has taken the view, and we think rightly so, that under the Criminal Procedure Code a Magistrate is entrusted with diverse duties and in discharging the same does not always function as a Court, conduct judicial proceedings or is amenable to the revisional jurisdiction. Some of his powers and duties under the Code are administrative, executive or ministerial and he discharges these duties not as a Court but as a *persona designate.* Mere name or designation of a Magistrate not decisive of the question because as observed, "Judges often administer and administrators often Judge". ... ...
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> A Magistrate, even while concurring in cancellation of a case is required to judicially examine the report admitted under section 173, Cr.P.C., AIR 1968 SC 117 and this have led to the impression that he must while doing so be acting and functioning as a Court 1972 Cr.L.J. 1446, 1971 Cr.L.J. 194 and AIR 1969 A.P. 281, etc. This obviously is a mistaken impression and the

> mistake will transparently surface from what has been observed by Robson and what was held in the case of Royal Aquarium. ... ... Though a Magistrate in cancelling a registered criminal case is required to act judicially in that he has to act fairly, justly and honestly, a duty common to the exercise of all state power, there is no *lis* before him, there is no duty to hear the parties, there is no decision given, no finality or irrevocability attaching to the order. The party is left free to institute a complaint on the same facts, and the same Magistrate does not even after passing such an order render himself *functus officio.* On the contrary he is quite competent to entertain and deal with such a complaint on material presented to him. These peculiarities establish beyond any doubt that in so concurring with a report submitted under section 173, Cr.P.C. he does not function as a criminal Court. For that reason his order is not amenable to revisional jurisdiction under sections 435 to 439, Cr.P.C."

10. With time, the judicial opinion expressed by this court in **Shahnaz Begum's case** and **Buhadur's case (supra)** was swayed to swell the scope of the inherent jurisdiction of the High Court under section 561-A Cr.P.C. It was in **Arif Ali Khan's case *(supra),*** that this court, expanded the inherent jurisdiction of the High Court under section 561-A Cr.P.C. by creating an exception to the *ratio* of **Bahadur's case *(supra)*** to cases where the facts of the case revealed a *mala fide* on the part of police[7]. It was opined that:

> "It is true that in the above cited case this Court clearly laid down that a Magistrate while cancelling a registered criminal case, acting on the report of police submitted to him under section 173, Cr.P.C., through required to act judicially but his orders so passed are not amendable to revisional jurisdiction under section 435 to 439, Cr.P.C. But this does not mean that where the Court reaches a positive conclusion in a case that a particular order passed by the subordinate criminal Court amounted to an abuse of the process of Court, it would be powerless to rectify the injustice. In the case before us, firstly, the application filed by respondent No. 2 before the High Court was not under sections 435 to 439, Cr.P.C. but it was a petition under section 561-A, Cr.P.C. Secondly, on the facts of the case the learned Judge in Chamber reached the conclusion that exclusion of the names of petitioners from the first challan submitted to the Court was a *malafide* act on the part of police and the manner in which the orders were obtained from the Magistrate by the police for discharge of petitioners from the case clearly amounted to an abuse of the process of the Court. On these considerations, the learned Judge in Chamber in our view as fully justified in setting aside the order of Magistrate under section 561-A, Cr.P.C. and direct him to dispose of the case in accordance with the law. No interference is called for with the order of High Court."

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7 the opinion expressed **in Shahnaz Begum's case** escaped the view in this case.

11. This extended scope of the inherent jurisdiction of the High Court under section 561-A, Cr.P.C., as adjudged in **Arif Ali Khan's case *(supra)***, was endorsed by subsequent decisions[8]. However, in **Muhammad Ali's case *(supra)***, the pendulum of the judicial opinion of this court swung back to its earlier position rendered in **Shahnaz Begum's case** and **Buhadur's case *(supra)***. This court, while discussing the functions and orders of *ex-officio* Justice of the Peace under section 22-A(6), Cr.P.C. were opined not to be "judicial", and thus could not be entertained by the High Court under its inherent jurisdiction under section 561-A, Cr.P.C.[9] It was opined that:

> "4. In view of the legal position discussed above we have entertained no manner of doubt that the order passed by the *ex-officio* Justice of the Peace under section 22-A(6), Cr.P.C. and impugned by the petitioner before the Lahore High Court, Lahore was an executive/administrative order and that the petitioner's petition filed under section 561-A, Cr.P.C. before the Lahore High Court, Lahore assailing the said order passed by the *ex-officio* Justice of the Peace was not competent or maintainable. Apart from that while seized of a petition filed under section 561-A, Cr.P.C. the Lahore High Court, Lahore had no jurisdiction to interfere in the investigation of a criminal case, as held in the precedent cases mentioned above. It has not been denied before us that during the pendency or hearing of that petition the petitioner had never applied before the Lahore High Court, Lahore or had requested the learned Judge-in-Chamber of that Court seeking conversion of the petitioner's petition filed under section 561-A, Cr.P.C. into a writ petition under Article 199 of the Constitution or its treatment as a writ petition without a formal conversion and, thus, the defect in competence and maintainability of the petitioner's petition filed under section 561-A, Cr.P.C. remained uncured and fatal to the petition."

12. Moving on, one must not lose sight of another fundamental settled principle that the inherent jurisdiction of the High Court under section 561-A, Cr.P.C. cannot be invoked as a substitute to any other remedy provided under the Cr.P.C. This principle has been reiterated recently by this Court in case of **Muhammad Farooq vs. Ahmed Nawaz Jagirani and others (PLD 2016 SC 55)** in terms that:-

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8 Muhammad Sharif's case, Hussain Ahmed's case and HidayatUllah's case.

9 However, it may be noted that while rendering its opinion, this court did not discuss the deliberations rendered in its earlier decision of this court in **Arif Ali Khan's case (supra).**

> "10. .....The orders passed either under Section 203, Cr.PC whereby the direct complaint is dismissed or under Section 204, Cr.PC whereby the Court has taken cognizance of an offence complained of and has issued warrants or summons for causing the accused to be brought or produced before the Court are judicial orders. Where taking cognizance of the offence after hearing the accused persons and the Prosecutor, the Court considers that the charge is groundless or that there is no probability of the accused being convicted of any charge, it may record acquittal under section 249-A Cr.P.C and or Section 265-K Cr.P.C as the case may be. The Sessions Judge and or the High Court under Sections 435 and 439 Cr.P.C may exercise Revisional power to examine the legality or propriety of any order passed and or examine the regularity of any proceedings of the Court subordinate to it. Exercise of jurisdiction under Section 561-A, Cr.P.C by the High Court is akin to the exercise of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973; exercise of such jurisdiction is not to be exercised in routine and or as a matter of course merely because such jurisdiction is available and or could be exercised. Exercise of inherent jurisdiction is dependent on non availability of alternate and efficacious remedy and or existence of some extraordinary circumstances warranting exercise of such jurisdiction by-passing such alternate remedy by the High Court. Another rule of propriety, that has evolved by precedent law must not lose sight is that where two Courts have coextensive or concurrent jurisdiction, than the propriety demands that jurisdiction of Court of the lower grade is to be invoked in the first instance.....
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> 11. The remedy under Section 561-A, Cr.PC is not an alternate and or substitute for an express remedy as provided under the law in terms of Sections 435 to 439, Cr.P.C. and or Sections 249-A or 265-K, Cr.PC, as the case may be. One cannot be allowed to bypass and or circumvent the ordinary remedy in normal course of the event".

13. Before we move on, it would be fair to first comment on the cases cited by the learned counsel for the parties and discussed hereinabove. Apart from the decisions in **Mohammad Ali's case** and **Muhammad Farooq's case (*supra*)**, all the other decisions cited above related to the powers and functions of the investigation officer or the Magistrate in the pre-trial stage, and that too before the *challan* were assigned for trial by the referring magistrate under section 190 Cr.P.C. It may be noted that section 6 of Cr.P.C recognises magistrate as a class of "courts". However, scanning the Cr.P.C., one notes that a magistrate (as a court) may pass a number of orders under Chapter VI, even at the investigation

stage, which are purely administrative orders. The question; whether it is correct to draw a distinction between administrative and judicial orders for the purpose of inherent or revisional jurisdiction, is surely a question beyond the scope of the controversy of the present case, we would, therefore, leave it to be examined it some other appropriate case. As for **Mohammad Ali's case (*supra*)**, it is noted that this case also is not very relevant, as it deals with the proceedings before a "Justice of Peace" and not a "court", as recognised within the purview of section 6 Cr.P.C. While **Muhammad Javed's case (supra)** though reiterating a general principle regarding the lack of inherent jurisdiction of the High Court in the face of a remedy already available under Cr.P.C., relates to orders passed during the complaint proceedings provided under section 200 Cr.P.C. Thus, the judgments, though very valuable in their deliberations and enunciation of the principles discussed therein, but surely distinguishable to the facts and circumstances of the present case.

14. Given the judicial precedents of our jurisdiction, discussed hereinabove, the judicial consensus that has evolved over time on the undisputed features of the inherent jurisdiction of the High Court under section 561-A. Cr.P.C. is curative in nature and would only be available, if no other remedy provided under Cr.P.C is attracted in a given case.

15. In the present case, the dispute essentially revolves around the type of jurisdiction of the High Court that would be available against the order of transfer of the case passed by ATC under section 23 of the Act at a pre-trial stage but after the submission of

Challan, summoning of all the accused and delivering them copies of documents prior to the framing of charge.

16. As discussed above, section 25 of the Act, provides for an appeal against the "final" judgment of the ATC resulting in conviction or acquittal, and not one against an order of transfer of case passed under section 23 of the Act. Hence, the remedy of appeal provided under the Act was not available to the present respondents. Accordingly, they were to then seek their remedy elsewhere, either under the provisions of Cr.P.C. or the Constitution of Islamic Republic of Pakistan, 1973 **("Constitution")**.

17. As discussed above, it is by now settled that the inherent jurisdiction of the High Court under section 561-A could not be invoked by an aggrieved party, if there was another remedy available under Cr.P.C., including that of revision before the High Court provided under section 435 of Cr.P.C.

Revisional Jurisdiction

18. A careful reading of section 435 Cr.P.C. reveals that the High Court has authority, not only *suo moto* but also on an application of an aggrieved party, to call for and examine the record "of any proceeding before any inferior criminal court" and pass appropriate orders in terms of powers vested under section 439 Cr.P.C. Thus, in order to invoke the revisional jurisdiction of the High Court under section 435 Cr.P.C., two conditions precedent constituting jurisdictional facts would require to be fulfilled: first, it should relate to "proceedings"; and second, the said "proceedings" should be before an "inferior criminal court".

Inferior Criminal Court

19. There can be no contest that, ATC is a "criminal court", within the contemplation of section 6 of the Cr.P.C. As far as ATC being "inferior" to High Court, the fact that the competent High Court is the appellate forum against the orders of ATC under section 25 of the Act, would surely render the ATC "judicially inferior"[10]to the competent High Court. More so, when in the Act, the legislature has not expressly barred the High Court from exercising its revisional jurisdiction, as has been rendered in other special enactments[11]. This court has while considering the *vires* of challenged orders passed under special statutes before the revisional jurisdiction of the High Court provided under Cr.P.C., kept in view two essential considerations: firstly, the express provision of providing in the special statute, remedy of appeal before the High Court; and secondly, in some cases, also the omission in the special statute to expressly bar the revisional jurisdiction of the High Court. Where these two conditions are fulfilled, the orders passed in exercise of revisional jurisdiction of the High Court under section 435 read with section 439 of Cr.P.C. have been legally maintained. Reference in this regard can be made to some of the leading case decided by this court while dealing with The Drugs Act,1976[12], Suppression of Terrorist Activities (Special Courts) Act 1975[13], Offences in Respect of Banks (Special Courts) Ordinance (IX of 1984)[14], Pakistan Criminal Law Amendment Act,

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10 The word "inferior" means judicially inferior Nobin Kristo Mookerjee v. Russick LallLaha (ILR 10 Cal. 269), and also endorsed by this court in Abdul Hafeez v. The State" (PLD 1981 SC 352).

11 Section 32 C National Accountability Bureau Ordinance (xviii of 2009)

12 Abdul Hafeez v. The State (PLD 1981 SC 352)

13 State v. Qaim Ali Shah (1992 SCMR 2192).

14 Habib Bank Ltd. v. The State and 6 others (1993 SCMR 1853)

1958[15] and even the Act[16]. Recently, a Full Bench of Lahore High Court in **Muhammad Jawad Hamid Versus Mian Muhammad Nawaz Sharif (PLD 2018 Lahore 836)** has aptly explained the scope of revisional jurisdiction of the High Court in the face of the finality[17] attributed to the impugned order passed by the ATC, and declared that:

> "8. For what has been discussed above, we hold that ATC is subordinate/inferior court to the High Court; in ATA no restriction has been imposed for filing of revision petition, hence, the High Court has the visitorial power over ATC, therefore, can entertain petitions in the nature of those covered by Sections 435, 439 of the Code, except to grant bail or release an accused in a case triable by ATC, in the light of restriction imposed under section 21(d) of the ATA, and writ petition is not maintainable."

Proceedings

20. This would then lead us to consider the fulfillment of the other jurisdictional condition; as to whether the order of transfer dated 13-11-2018 passed by ATC can be termed as "any proceedings" envisaged in section 435 Cr.P.C. The term "proceedings" has not been defined in the Cr.P.C. or P.P.C. or even the Act, it would then be safe to apply its ordinary meaning. A similar exercise was extensively carried out by this court in **The State Versus Naeemullah Khan (2001 SCMR 1461)**, wherein the word "proceedings" having not been defined in Hazara Forest Act, 1936 was considered in its ordinary dictionary meaning in the light of the judicial opinion rendered by this court and across the border. This court affirms the opinion regarding the purport of the term "proceeding" finally expressed in the said decision, when it concluded that:

> "Keeping in view the literary meaning and the, interpretation of the word 'proceeding' as interpreted in various pronouncements given above, we are of the opinion that the word 'proceedings' is a comprehensive expression which includes every step taken

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15 Mian KHALID RAUF versus Chaudhry MUHAMMAD SALEEM (PLD 2015 SC 348)

16 Criminal Appeals Nos. 257 of 2000 and others (Syed Hussain Abbass v. The State) an unreported judgment of this court cited in Huzoor Bux Versus The State (PLD 2008 Karachi 487).

17 section 31 of the Act

> towards further progress of a cause in Court or Tribunal, from its commencement till its disposal. In legal terminology the word "proceedings" means the instituting or carrying on of an action of law. Generally, a 'proceeding' is the form and manner of conducting judicial business before a Court or judicial officer, including all possible steps in an action from its commencement to the execution of a judgment and in a more particular sense it is any application to a Court of justice for aid in enforcement of rights, for relief, for redress of injuries, or damages or for any remedial object. It in its general use comprehends every step taken or measure adopted in prosecution or defence of an action."
>
> (emphasis provided)

21. Even when we view the legislative history of section 435, Cr.P.C. our above opinion is further confirmed. It is noted that the revisional jurisdiction of the Sudder Court/High Court extended only to the "judicial proceedings" under the Codes of 1861 and 1872. It was only in the Criminal Procedure Code, 1882 that the word "judicial" was conspicuously omitted, and the subject of revisional power of the High Court was expanded to "any proceedings". Further, Cr.P.C. finally adopted the terms of its predecessor Code. The legislative intention is, thus, marked and very obvious. Therefore, in consequence thereof, the term "any proceeding" in section 435 Cr.P.C. has to be offered a liberal interpretation, and would thus include any steps taken by the Court under the law.

22. To sum up our opinion on the scope and extent of the revisional jurisdiction of the High Court under the enabling provisions of Cr.P.C., we are reminded of the views of Cecil Walsh J., in his instructive book on "Revision and Extraordinary Jurisdiction,"[18] wherein, while commenting on criminal revisional jurisdiction of the High Court, concluded in terms that:

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18 As stated in Mahabir Singh and Ors. Vs. Emperor (AIR 1944 Cal 17)

> "The original object of this legislation appears to have been to confer upon superior criminal Courts, in all cases where no appeal was provided, a kind of paternal or supervisory jurisdiction, without the intervention necessarily of any interested party, in Order to correct any miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions, or apparent harshness of treatment, which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals ... The High Courts' powers of revision are specifically prescribed in Sub-Section (1) (of Section 439). They are in substance such as may be exercised by a Court of appeal, and they leave little difference discernible between what the Court may do when sitting in appeal, and what it may Order when sitting in revision. In practice substantial differences exist."

23. Therefore, some of the essential yet determinative factor for the exercise of revisional jurisdiction of High Court against an order of ATC would be: whether it has been passed by ATC in "any proceedings" before it; and whether no appeal has been provided for the same under the Act; and Whether the revisional jurisdiction has expressly not been barred for that matter under the Act.

24. In view of the above deliberations, it would be safe to state that ATC being a judicially "inferior criminal court" to the High Court and that the order of transfer of the case dated 13-11-2018 was passed during the "proceedings" of the case before the ATC. Accordingly, the two condition precedents for invoking the revisional jurisdiction of the High Court under section 435 was satisfied, and thus the grievance of the present respondent/ complainant in FIR No.20 was maintainable under the revisional jurisdiction of the High Court under section 435 Cr.P.C. This being so, the challenge of the present respondent/ complainant in FIR No.20 made to the order of the ATC transferring the case to an ordinary criminal court of competent jurisdiction was not maintainable before the High Court under its inherent jurisdiction of section 561-A, Cr.P.C., or its constitutional jurisdiction under

Article 199 of the Constitution, as they had an alternative remedy available before the criminal revisional jurisdiction under section 435 Cr.P.C. It is also an admitted position that neither the learned High Court on its own motion nor the present respondent/complainant in FIR 20 made any request to convert their petition filed under section 561-A Cr.P.C. into one under section 435 Cr.P.C. Accordingly, the impugned decision before us can, now, only be adjudged as one rendered by the High Court, while exercising its inherent jurisdiction under section 561-A Cr.P.C., and not otherwise.

Order of transfer of case premature

25. Let us move on to the jurisdictional challenge made by the worthy counsel for the respondent/complainant in FIR No. 20 to the exercise of authority by the learned ATC to consider and transfer the case to an ordinary criminal court under section 23 of the Act. It was urged that exercise of authority by the ATC to transfer the case was premature, as the expressed condition precedent provided under section 23 of taking "cognizance" of an offence by the ATC had not taken place, and thus, the very order of transfer by the ATC was *void ab initio*.

26. To appreciate this jurisdictional challenge, it would be appropriate to understand that the Act is a special enactment, aimed to "provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences; Whereas it is expedient to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected

therewith and incidental thereto"[19]. And to this end, the legislature has, *inter alia*, provided a special procedure for registration, investigation and trial for commission of the offences triable there under. The matter in hand relates to the authority vested in the ATC to transfer a case under section 23 of the Act. In this regard, to fully recognise the extent of the authority of ATC to transfer the case, we are to essentially review provisions for establishment, procedure of proceedings and power to transfer a case by ATC, provided in sub-section 2 of section 13, sub section 3 of section 19 and section 23 of the Act, respectively, which read as under:

> **Section 13**
> **Establishment of Anti-terrorism Court.**(1) For the purpose of providing for the speedy trial of the cases [under this Act] and of scheduled offences, the Federal Government, or if so directed by the Government, the Provincial Government may establish by notification one or more Anti-terrorism Courts in relation to [each territorial area as specified by the High Court concerned].
>
> (2) **Where more Anti-terrorism Courts than one have been established in any area, the Government in consultation with the Chief Justice of the High Court shall [designate a judge of any such Court to be an administrative judge] and all cases trial under this Act pertaining to the said area shall be filed before the [said court and such judge may either try the case himself] or, assign any case, or cases, for trial to any other Anti-terrorism Court at any time prior to the framing of the charge. The cases shall be assigned to a court one case at a time:**
> Provided that in order to ensure that the time of the court is not wasted if for some reason a given case cannot proceed more than one case can be assigned to it at any time or from time to time.
>
> **Section 19(3)**
> The [Anti-terrorism Court] may directly take cognizance of case triable by such court without the case being sent to it under section 190 of the Code.
>
> **Section 23**
> **Power to transfer cases to regular courts.** Where, **after taking cognizance of an offence**, [an Anti-terrorism Court] is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction under the Code, and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.
>
> **(emphasis provided)**

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19 The preamble to the Act.

27. A brief resume of the special procedure provided in the Act, commencing from the stage the *challan* is submitted till the framing of the charge, would highlight the extent of jurisdictional facts or the condition precedent for ATC to transfer the case under section 23 of the Act. The same is as follows:

Stage I Submission of the *Challan*.

On completion of the investigation, the *challan* of the case, under sub-section (2) of section 13 of the Act, is put in the court of the Administrative Judge of the ATC, and further that under sub-section 3 of section 19 of the Act, the same is not sent by a Magistrate under section 190 of Cr.P.C.

Stage II Decision of assignment or trial by Administrative Judge.

Administrative Judge of the ATC, who on receipt of the *challan* may proceed with the trial himself or assign the same for a trial to any other ATC. However, the said assignment has to be made before framing of charge by the said Administrative Judge, as provided under sub-section 2 of section 13 of the Act. However, this restriction of the time period in the initial assignment of cases to ATC would not limit the authority expressly vest in the Administrative Judge to transfer the trial from one ATC already assigned the case to another under sub-section 4 of section 13 of the Act.

Stage III Authority of transfer by Administrative Judge.

In cases, where the Administrative Judge of the ATC decides to proceeds with trial himself, and not assign the same to the other ATC, then the Administrative Judge proceeds with the case in the same manner as any other judge appointed as an ATC under sub-section 1 of section 13 of the Act.

Step I **Proceedings before ATC**

I. Under section 16 of the Act, the Judge ATC at the commencement of the proceedings of the case is to make an oath to the effect that he shall decide the case honestly, faithfully and considering himself accountable to Almighty Allah.

Step II **Cognizance of the case by ATC**

I). In cases where ATC, on receipt and consideration of the *challan* and the material placed therewith, forms an opinion that the offences mentioned therein do not come within the scope of offences triable under the Act, transfers the case under section 23 to an ordinary criminal court to proceed with the trial under Cr.P.C. The judicial precedents endorse the view that *challan* and the material placed therewith by the prosecution would suffice for the ATC to decide whether to proceed with the case or to transfer the same under section 23 of the Act[20].

II). The conjunctive reading of section 23 with subsection (2) of section 13 of the Act, reveals that the only restriction on the authority of the Administrative Judge to transfer the case to an ordinary criminal court is that it must have taken cognizance of the case.

III). There is no express time limit for the exercise of this authority of ATC after it has taken cognizance of the case. Hence, it can safely be stated that ATC may after taking cognizance, transfer the case to an ordinary criminal court and this authority to transfer can be exercised during the entire proceeding of the trial.

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20 Shahbaz Khan *alias* Tappu and others v. Special Judge Anti-Terrorism Court No. 3, Lahore and others (PLD 2016 SC 1) and Nasir Abdul Qadir and others v. The State (2003 SCMR 472) and Allah Din Versus The State (1994 SCMR 717)

IV). What is also to be noted is that the express limitation of time (till framing of the charge) provided under sub-section 2 of section 13 relates only to the initial assignment of the case by the Administrative Judge to another ATC and not the authority of transfer of the case to an ordinary criminal court under section 23 of the Act.

Stage IV Authority of transfer by ATC.

I. In cases, where the Administrative Judge has assigned the case for trial to ATC, the assignee judge of the ATC, like the Administrative judge, subject to the express limitations provided under the Act, is empowered to take all the steps and pass all order stated hereinabove in Stage III.

"Cognizance of the case"

28. This leads us to the crucial issue, as to what is meant by the words "cognizance of the case" as employed in section 23 of the Act. As the term "cognizance" has not been defined in the Act or Cr.P.C., and further that there being no contextual vagueness or ambiguousness involved therein, it would then be safe to apply its ordinary and natural meaning. As the word themselves alone do in such a case best declare the intention of the lawgiver[21]. In doing so, one must be careful not to seek reference from very limited or outdated sources, as it may not provide the clear meaning of the word intended by the legislature. In this regard, some of the dictionary meaning of the word “cognizance” are stated herein below for review and consideration:

LexisNexis, Australian Legal Dictionary, 2nd Edition:
1. Hearing and determining a cause of action or a matter. **2**. The right of a court, tribunal or other body to deal with a matter legally. **3**. Judicial notice is taken of a fact by a court. **4**. Admission or acknowledgement of a fact alleged.

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21 Craines on Statute Law, 7th Edition by SGG Edgar

Black's Law Dictionary, 8th Edition
1. A court's right and power to try and to determine cases; Jurisdiction. **2.** The taking of judicial or authoritative notice. **3.** Acknowledgment or admission of an alleged fact; esp. (hist) acknowledgment of a fine. **4.** Common law pleading.

Osborn's Concise Law Dictionary, 7th Edition
Judicial notice or knowledge; jurisdiction.

Chambers English Dictionary
Knowledge or notice, judicial or private: observation: Jurisdiction: that by which one is known, a badge.

The Oxford Universal Dictionary Illustrated
Knowledge or notice, judicial or private: observation: Jurisdiction: that by which one is known, a badge.

Mitra's Legal and Commercial Dictionary

1. Knowledge as attained by the observation or information; perception, notice, observation.
2. (a) The hearing and trying of a cause.

   (b) The right of dealing with any matter judicially; jurisdiction.

3. Acknowledgement; admission of a fact alleged; *esp.* acknowledgement of a fine. **b.** A plea in replevin that defendant holds the goods in the right of another bailiff.

4. A device by which a person, company, etc., is distinguished, as a crest, etc.; a badge; a device borne for distinction by all the retainers of a noble house.

29. A full bench of the Lahore High Court in **Wazir Versus The State (PLD 1962 (W.P.) Lahore 405)** has after an extensive deliberation on the legal purport of the term "cognizance" in the criminal justice system, and the *ratio* consistently endorsed by the judicial precedents in our jurisdiction opined that:

> ".....In other words, the police report by itself, when received by the Magistrate, does not constitute the taking of cognizance, and it is reasonable to expect that something more will be done to show that the Magistrate intends to start the proceeding..... He may keep the case waiting until the sanction arrives and then pass some order to show that he intends to hold a trial."

30. The *ratio* of **Wazir's case (supra)** has been consistently followed by the precedents that followed. One of the defining decisions in this regard is **Alam din Versus the State (PLD 1973 Lahore 304),** wherein it was the earlier opinion of the full bench was reconfirmed and refined in terms that:

> "A Court takes cognizance by a judicial action which need not necessarily involve any formal act, but occurs as soon

> as the Court applies its mind to the suspected commission of the offence, as disclosed in the police report or the private complaint, for the purpose of proceeding in a particular way in accordance with the provisions contained in the Code for holding an enquiry or a trial, as the case may be;"

31. And finally, this court also in **Haq Nawaz and others versus The State (2000 SCMR 785)** discussed the purport of the term "cognizance of a case", and held that:

> From a review of the above provisions of the Code, it is quite clear to us that taking of cognizance of a case by a Court is not synonymous with the commencement of the trial in a case. Taking of cognizance of a case by the Court is the first step, which may or may not culminate into the trial of the accused. The trial in a criminal case, therefore, does not commence with the taking of the cognizance of the case by the Court. A careful examination of the above provisions in the Code makes it clear that until charge is framed and copies of the material (Statement of witnesses recorded under sections 161 and 164, Cr.P.C., inspection note of the first visit to the place of occurrence and recoveries recorded by investigating officer, if the case is initiated' on, police report, and copies of complaint, other documents filed with complaint and statements recorded under section 200 or 202 if it is a case upon complaint in writing) are supplied to accused free of charge and he is called upon to answer the charge. In the case before us, the challan was filed before the Court on 5-1-1991 and the accused were also summoned to appear before the Court on 6-1-1991, which may amount to taking of the cognizance of the case by the Court. However, in view of the provisions of the Code referred to above, these steps could not amount to commencement of the trial of the appellant.
>
> (emphasis provided)

32. Given the above discussed, ordinary meaning of "cognizance of the case" and the judicial opinion rendered thereon, it can plainly be stated that ATC would be said to take "cognizance of the case" when on the receipt of the *challan* along with the material placed therewith by the prosecution, it takes judicial notice thereon by the conscious application of mind and takes positive steps to indicate that the trial of the case is to follow. These steps need not necessarily be recorded as judicial orders. What is essential is that the orders so passed or steps taken reflect that ATC is to proceed with the trial.

33. To sum up the above discussion on the authority vested in the ATC to transfer a case, as envisaged under section 23 of the Act, we may note that:

I) Both, the Administrative Judge and any other ATC to whom the case is assigned by the Administrative Judge, after taking "cognizance of the case", have the authority to transfer the case under section 23 to an ordinary criminal court for trial under Cr.P.C.

II) The authority of ATC to transfer the case under section 23 to an ordinary criminal court for trial under Cr.P.C. can take place after taking cognisance of the case, and this authority to transfer remains with the ATC during the proceedings of the trial till the judgment is announced.

III) The condition precedent for ATC to exercise the authority to transfer the case under section 23 of the Act are: firstly when the ATC takes cognisance of the case; and secondly, if ATC is of the opinion that the offences referred to it for trial does not come within the scope of offences triable under the Act.

IV) The words "cognizance of the case" employed in section 23 of the Act simply means, when the ATC on receipt of the *challan* takes any step indicative of proceeding with the trial.

34. Given the above summation of the law, we are not inclined to accept the contention of the learned counsel for the respondent/complainant of FIR No.20 that the order of the ATC dated 13-11-2018 transferring the case to the ordinary court under section 23 of the Act was premature, as it had not taken "cognizance of the case". The reasons for our opinion is obvious: firstly, it is an admitted fact that the *challan* along with the material was placed before the ATC, and the Court had not only served the named accused therein to appear before it, but also provided to them the requisite material under section 265 (c) of Cr.P.C. to respond to the charge that was to be framed, for which a date was fixed. Moreover, we are to keep in mind that ATC had to peruse the entire prosecution material before fixing a date for framing of charge under section 265 (d) Cr.P.C. These distinct

steps were taken by the ATC reflects its conscious application of mind on the material placed before it to proceed with the trial of the named accused; secondly, the present objecting complainant party/respondent had not been taken by the surprise, as they were provided a full opportunity by the ATC of addressing their contentions on the crucial issue, before passing the contested order dated 13-11-2018; and finally, the order of ATC dated 13-11-2018, was in fact, in compliance to the consent order of this court dated 13-9-2018, whereby all matters pending before it, including the pending application of the present petitioners dated 10-9-2018, were duly consented to be decided by the ATC, as clearly reflected in the said order of this court in terms that:

> "....The matter shall be deemed to be pending before learned Judge, ATC, to whom the case has been transferred who shall consider **all matters pending before it as raised by the learned counsel for the parties and the State and decide the same** without being influenced by any earlier observation made by the learned Judge, ATC or by the learned High Court by way of the impugned orders..." (emphasis provided)

"Terrorism" under the Act

35. This brings us to the merits of the very decision of the ATC transferring the case. To adjudge the legal correctness of the said transfer order of the ATC, it has to be seen, whether the facts alleged by the complainant in FIR No.20 constitute an offence of "terrorism", as envisaged under section 6 of the Act. As to what would constitute an offence triable under the Act was aptly dealt with by a larger bench of this Court in the case of **Ghulam Hussain v. The State (PLD 2020 SC 61)** wherein, after deliberating exhaustively on the conflicting precedents, this court has held that:

> "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 labelled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta."

36. We note from the above, that this court in **Ghulam Hussain's case (*supra*)** has finally clarified the two most often misgivings about the scope and extent of the term "terrorism" under the Act: firstly, it was clarified that no matter how grave, shocking, brutal, gruesome or horrifying the offence, it would not fall within the scope of 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; and secondly, even if an offence falls squarely within the scope specified in sub-section 2 of section 6, it would not constitute the offence of "terrorism", if the same was in furtherance of a private dispute or vendetta.

37. It is the case of the prosecution, as reported by Pervaiz Ahmad, the complainant in FIR No.20, that Burhan son of Shabbir Ahmad Chandio, while seated in his vehicle, instigated the six-armed person, including the present petitioners that, the complainant party "have created mutiny against Sardar Khan and were restrained so many times but not turned away and committed their murder and finished them, on the instigation of Burhan and Sardar Khan accused opened faces of weapons and to spread terrorism made firing and spread harassment in common people", which led to the death of complainant's father and his two brothers. However, when we revert to what prompted the crime, as

recorded in the FIR No. 20, it is noted that it was a rivalry over the chiefdom of *Chandio* tribe, and thus essentially a private dispute between two families within a tribe. Needless to mention, that admitted, the present petitioners and the complainant are closely related to each other through marriage. Moreover, we hold no doubt, that the facts recorded in the FIR No.20 depict a shocking, brutal, and gruesome crime leading to a triple murder case. But given the *ratio* of **Ghulam Hussain's case (*supra*)**, the very design and purpose leading to the crime being a private dispute relating to tribal ascendency would to our mind result in keeping the same outside the scope of the term "terrorism" within the contemplation of the Act. It appears that the High Court erred by misconstruing the fact and thereby failing to correctly apply the principles in appreciating the true purport of the term "terrorism" under the Act.

Transfer of the case be delayed till recording of evidence

38. In regard to the contention of the learned counsel to delay the decision of the transfer of the case till evidence is recorded in the case, we are not convinced to agree therewith. Once we conclude that ATC had legally requisite material available to decide the issue of transfer of the case, and that the decision so taken was legally correct to hold that it lacked jurisdiction to try the case, it would against the cardinal principle of safe administration of criminal justice to then clog the authority vested in the ATC under section 23 to transfer the case or for that matter direct it to proceed with the trial.

39. For the reasons recorded, hereinabove, this petition for leave to appeal is hereby converted into appeal, and the appeal is

allowed in terms that the judgment dated 21.02.2019 passed by the learned Bench of Sindh High Court at Sukkur in Criminal Miscellaneous Application No. D-998 of 2018 is hereby set aside, and the order of the Anti-Terrorism Court dated 13-11-2018 is restored.

Judge

Judge

Judge

Announced in Open Court on 30.6.2020 at Islamabad

Judge

Approved for reporting
Arif