

Date of hearing: 10.1.2018.

Order

Impugned herein is order dated 14-5-2016 whereby learned Special Judge Anti Terrorism Court-II, Rawalpindi Division remitted case registered *vide* FIR No. 574 dated 10-8-2012 under Sections 302, 324, 148, 149 of the Pakistan Penal Code, 1860 read with Section 7 of the Anti Terrorism Act, 1997 with Police Station Civil Lines, Rawalpindi into regular jurisdiction. Six persons, namely, Nadeem Qureshi, Parvez Qureshi, Adnan Qureshi, Suleman Qureshi, Orangzeb and Javed Qureshi were gunned down at 12:15 a.m on 10-8-2012 in Gulistan Colony Rawalpindi; twelve persons, variously armed, were arrayed as accused; grudge on account of family division was cited as motive behind the crime. Upon conclusion of investigation, a report under Section 173 of the Code of Criminal Procedure, 1898 was submitted in the Special Court constituted under the Anti Terrorism Act, 1997, however, the case was transferred to the Court of Session *vide* order dated 16-4-2013, assailed through Constitutional Petition No. 1071 of 2013 allowed *vide* order dated 05-10-2015 by a learned Division Bench of this Court, however, upon a motion, the Supreme Court of Pakistan disposed of the issue in the following terms:--

"After arguing the case at some length, Raja Ikram Ameen Minhas, learned ASC for the appellants, seeks permission to withdraw this appeal with the condition that it shall be left open for the appellants to move proper application under Section 23 of the Anti-Terrorism Act, 1997 before the Trial Court at some proper stage of the proceedings, which shall be decided by the Court without being influenced of the impugned order of the High Court. Dismissed accordingly."

The learned Special Judge once again remitted the case into regular jurisdiction *vide* order dated 14-5-2016, vires whereof, are being challenged afresh through this Constitutional petition.

2. Learned counsel for the petitioner contends that magnitude of violence, unleashed by the respondents, resulting into six deaths and multiple injuries to the witnesses, devastatingly struck terror in the entire neighborhood within the contemplation of Section 6 of the Act *ibid* and a personal motive behind massacre would not by itself mitigate the enormity of crime that given its heinous nature merits 'speedy trial' through mechanism provided under the Act; places reliance in the cases, *Basharat Ali v. Special Judge, Anti-Terrorism Court-I, Gujranwala* (PLD 2004 Lahore 199), *Waris Ali and 5 others v. The State* (2017 SCMR 1572), *Abdul Nabi v. The State* (2017 SCMR 335), *Anjad Ali and others v. The State* (PLD 2017 SC 661), *Ch. Shaukat Ali v. Haji Jan Muhammad and others* (2017 SCMR 533), *Sagheer Ahmed v. The State and others* (2016 SCMR 1754), *Ahmed Jan v. Nasrullah and others* (PLJ 2012 SC 56) *Bashir Ahmed V. Muhammad Siddique and others* (PLD 2009 SC 11) *Muhammad Yaqoob and others v. The State* (2009 SCMR 527) *Mohabbat Ali and another v. The State and another* (2007 SCMR 142) *Fazal Dad v. Col.(Rtd) Ghulam Muhammad Malik and others* (PLD 2007 SC 571) *Ch. Bashir Ahmad v. Naveed Iqbal and 7 others* (PLD 2001 SC 521) *Tariq Hakim v. The State and 2 others* (2011 YLR 19). Contrarily, the learned counsel for the respondents argued that given the loss of life and reckless use of firearms in a thickly populated area not only devastated the families of the victims but had struck terror and fear in the locality as well as residents thereof and, thus, the case was to be most aptly tried in special jurisdiction contrived to attend situations like one in hand to create a deterrent, as contemplated by the law.

4. Heard. Record perused.

5. The concept of 'terrorism' has been focus of judicial scrutiny since quite some time; it is essentially in the backdrop of selection of jurisdiction to try certain acts of violence, distinguishable from run of the mill criminal cases with a view to provide an accelerated and expeditious mechanism for their disposal; these are the cases by and large emanating from modern urban terrorism or concomitance, motives operating beyond State boundaries. Legislature in its wisdom, brought such type of cases out of regular jurisdiction by providing a special forum with a time frame as well as through a procedure that left limited space to the accused as compared to normal procedures. The controversy cropped up with cases involving heavier magnitude of violence and loss of life, however, falling outside the categories mentioned above. Analysis of the above phenomena had been elucidated in the case of *Basharat Ali Vs. Special Judge Anti-Terrorism Court-II Gujranwala* (PLD 2004 Lahore 199) wherein it was *inter alia* held as under:--

"The discussion made above shows, and shows quite clearly, that out of the various facets of the world view about terrorism one factor is constant and that is that in order to qualify as terrorism an act must be designed to achieve a political and a larger objective and the same is not primarily directed against the actual victims themselves who are treated merely as 'collateral damage'. It is also quite evident that the extent of the actual damage caused or injuries inflicted by the act is not the determinative factor in this regard."

Upon scrutiny, though the view was not initially received with favour by the Supreme Court of Pakistan, as reported in the case of *Mirza Shoukat Baig and others v.*

Act in order to conclude as to which of the cases is triable by the Anti-Terrorism Court, as in many criminal cases, facts of the case are also one of the factors in determining the jurisdiction of a criminal Court. However, we have attempted to generalize the principles which need to be applied by the Courts while deciding the jurisdiction of an Anti-Terrorism Court."

On overall analysis of the case law referred to above, it can be safely concluded that combination of both design based upon ideological, political or sectarian considerations, directed either upon specific targets or public at large involving magnitude of violence with resultant damage that may possibly bring a case within the mischief of Section 6 of the Act *ibid*. In the absence of design contemplated above cases involving settlement of personal scores in cases grounded into conventional motive have to be tried in regular jurisdiction. Recent cases of *Amjad Ali & others Vs. The State* (PLD 2017 SCMR 661) and *Waris Ali Vs. The State* (2017 SCMR 1572) amply illustrate exclusion of above cases from special jurisdiction. In the case in hand loss of life in terms of six homicidal deaths extremely unfortunate, nonetheless, is sequel of a rivalry raging between the two factions for considerable span of time with no nexus with the purposes to be attended by the Act *ibid*, therefore, view taken by the learned Special Judge being unexceptionable does not call for any interference. Writ Petition No. 1692 of 2016 fails. **Dismissed.**

(Y.A.) Petition Dismissed