

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

*Raja Saeed Akram Khan, J.*  
*Ghulam Mustafa Mughal, J.*

Civil Appeal No.98 of 2019  
(PLA filed on 02.01.2010)

1. Umair Arif, s/o Muhammad Arif, r/o Dana, Tehsil and District Muzaffarabad, presently in Judicial Lockup Rara, Muzaffarabad.
2. Shadab Farooq, s/o Muhammad Farooq, r/o Mathai, Tehsil and District Muzaffarabad, presently in Judicial Lockup Rara Muzaffarabad.
3. Mehran Rouf s/o Muhammad Rouf, r/o Katkair, Tehsil and District Muzaffarabad, Presently in Judicial Lockup Rara, Muzaffarabad.
4. Mehran Afaq s/o Raja Muhammad Afaq Khan r/o Harioyoula, Tehsil and District Muzaffarabad, presently in Judicial Lockup Rara Muzaffarabad.
5. Hamad Abbasi s/o Naeem Abbasi, r/o Dana, Tehsil and District Muzaffarabad, presently in Judicial Lockup Rara, Muzaffarabad.

6. Usama Sarwar s/o Ghulam Sarwar, r/o Garhi Dupatta, Tehsil and District Muzaffarabad.
7. Moheed Iftikhar s/o Raja Iftikhar, r/o Dana, Tehsil and District Muzaffarabad.

.... APPELLANTS

**VERSUS**

1. Sessions Judge Muzaffarabad/Judge Anti-Terrorism Court, Muzaffarabad.
2. State through Advocate-General of Azad Jammu and Kashmir Muzaffarabad.
3. Senior Superintendent Police, Muzaffarabad.
4. PDSP as Special Prosecutor Department of Anti Terrorism.
5. Station House Officer (SHO), Police Station City Muzaffarabad.
6. Mr. Harron-ur-Rasheed s/o Raja Ashraf, r/o Neelum, Tehsil Athmuqam, District Neelum.

.... RESPONDENTS

(On appeal from the judgment of the High Court dated 17.12.2018 in writ petition No.1527 of 2018)

FOR THE APPELLANTS: Raja Shujaat Ali Khan, Advocate.

FOR THE RESPONDENTS: Mr. Tahir Aziz Khan, Advocate.

FOR THE STATE: Raja Inamullah Khan, Advocate-General.

*Date of hearing:* 14.02.2020.

**JUDGMENT:**

**Raja Saeed Akram Khan, J.**— Through the captioned appeal by leave of the Court, the validity of the judgment of the High Court dated 17.12.2018, has been made disputed, whereby, the writ petition filed by the appellants, herein, was dismissed.

2. The facts necessary for disposal of this appeal are that the appellants, herein, filed a writ petition in the High Court, alleging therein, that they are the students of the different departments of the University of Azad Jammu & Kashmir, Muzaffarabad. Respondent No.5, herein, with mala fide intention and

connivance of respondents Nos. 3 and 4, herein, registered a false and concocted case against them and some others in the offences under sections 147,148, 149 and 302, APC read with section 6 of Azad Jammu and Kashmir Anti Terrorism Act, 2014 (hereinafter to be referred as ATA), at City Police Station, Muzaffarabad on 25<sup>th</sup> April, 2018. It was further alleged that after completion of the investigation by the Joint Investigation Team (JIT) some of the nominated accused had been exonerated under section 169, Cr.P.C., however, in the garb of the aforesaid concocted case, the Police apprehended the appellants and after investigation they have been sent to the Central Jail Rara, Muzaffarabad. On the conclusion of the investigation, the *challan* has been presented against the appellants in the Anti Terrorism Court, Muzaffarabad. They moved an

application before the aforesaid Court that the offence under section 6 of ATA is not attracted/applicable in the instant case, rather the same has been incorporated in the F.I.R. with mala fide intention just to victimize them, therefore, the case may be transferred to the District Court of Criminal Jurisdiction for further proceedings. The learned Judge Anti Terrorism Court dismissed the application; hence, they constrained to invoke the extraordinary writ jurisdiction of the High Court. After necessary proceedings, the learned High Court through the impugned judgment dated 17.12.2018, dismissed the writ petition, hence, this appeal by leave of the Court.

3. Raja Shujaat Ali Khan, Advocate, the learned counsel for the appellants submitted that the impugned judgment of the learned High Court is based on misinterpretation of law

and the facts of the case which is not sustainable in the eye of law. He contended that the learned High Court fell in error of law while not taking into account that the case has wrongly been sent to the Anti Terrorism Court for trial, whereas, no element of terrorism is available in the same. He argued that the story has been invented just to bring the case within the purview of section 6 of ATA. He added that the occurrence took place in the result of previous enmity between the parties; therefore, the provisions of ATA do not attract and the same is triable by the District or Additional District Court of Criminal Jurisdiction. In continuation of the arguments, he submitted that in the latest case titled *Ghulam Hussain and others v. The State & others* (delivered in criminal appeals No.95, 96 of 2019, civil appeal No.10-L of 2017 and criminal appeal No.63 of 2013), the apex

Court of Pakistan defined the phrase 'terrorism' in a comprehensive manner but the said judgment has not been adhered to by the Courts below. He prayed for acceptance of appeal and transfer of the case from the Special Court of Judge Anti Terrorism to the Court of ordinary jurisdiction.

4. On the other hand, Mr. Tahir Aziz Khan, Advocate, the learned counsel for the complainant strongly controverted the arguments advanced by the learned counsel for the appellants. He submitted that both the Courts below after due deliberation and application of judicial mind have rightly come to the conclusion that the case falls within the purview of ATA and the same is triable by the Courts established under the special law. He contended that from the contents of FIR, it is very much clear that the appellants created the sense of insecurity in the public at large;

thus, the provisions of ATA are fully attracted. The occurrence took place in a very busy area near to CMH due to which a panic has been created in the people and they felt themselves unsecure which is a basic ingredient for application of the provisions of ATA.

5. Raja Inamullah Khan, the learned Advocate-General adopted the arguments advanced by the learned counsel for the complainant and further added that from the contents of FIR, it appears that the case against the appellants is fully covered by the provisions of section 6 of ATA, hence, the Courts below rightly refused to grant the prayed relief to the appellants. He prayed for dismissal of appeal.

6. We have heard the arguments of the learned counsel for the parties and gone through the record made available along with



the impugned judgment. The sole point involved in the matter is; whether the provisions of section 6 of ATA are attracted in the case of the appellants or not? To reach the right conclusion, we appreciated section 6 of ATA, which deals with the punishment for the acts of terrorism. For better appreciation the same is reproduced hereunder:-

“6. Punishment for acts of terrorism:-

(1) Whoever commits an act of terrorism under Section 5, whereby;

(a) death of any person is caused, shall be punishable, on conviction, with death or with imprisonment for life, and with fine; or

(b) he does anything likely to cause death or endangers life, but death or hurt is not caused, shall be punishable, on conviction, with imprisonment of either not caused, shall be punishable, on conviction, with imprisonment of either

description for a term which shall be not less than ten years but may extend to imprisonment for life and with fine;

- (c) grievous bodily harm or injury is caused to any person, shall be punishable, on conviction, with imprisonment of either description for a term which shall not be less than ten years but may extend to imprisonment for life and shall also be liable to a fine; or
- (d) grievous damage to property is caused, shall be punishable on conviction, with imprisonment, of either description for a term not less than ten years but may extend to imprisonment for life and shall also be liable to a fine; or
- (e) the offence of kidnapping for ransom or hostage-taking has been committed, shall be punishable on conviction, with death or imprisonment for life; or
- (f) the offence of hijacking, has been committed, shall be punishable on

- conviction, with death or imprisonment for life and fine; or
- (g) the act of terrorism falls under Section 5(2)(e), shall be punishable with imprisonment which shall not be less than fourteen years but may extend to imprisonment for life;
  - (h) the act of terrorism committed falls under section 5(2)(f) and (g), shall be punishable, on conviction, with imprisonment of not less than two years and not more than five years and with fine; or
  - (i) the act of terrorism committed falls under clauses (h) to (n) of sub section (2) of section 5, shall be punishable, on conviction, to imprisonment of not less than five years but may extend to imprisonment for life and with fine; and
  - (j) any other act of terrorism not falling under clauses (a) to (h) above or under any other provision of this Ordinance, shall be punishable on conviction, to imprisonment of not

less than five years and not more than ten years or with fine or with both.

(2) An accused convicted of any offence under this Ordinance shall be punishable with imprisonment of ten years or more, including the offences of kidnapping for ransom and hijacking shall also be liable to forfeiture of property."

The bare reading of provisions (supra) postulates that these are attracted on the acts of terrorism defined under section 5 of ATA, meaning, thereby, that section 6 of ATA cannot be read in isolation rather the same shall be read together with section 5 of Act. If section 6 of ATA is read in isolation then every case of murder, grievous injury, grievous damage to private property and the act which is likely to cause death etc. would constitute the offence of terrorism which is against the scheme of this special law. Section 5 of ATA is

specified into difference subsections, under subsection subsection (1), the act of terrorism has been defined, whereas the other subsections deal with actions which fall within the meaning of subsection (1), so, it will be appropriate to reproduce here subsection (1) of section 5 of ATA, which reads as under:-

“5. Terrorism:- (1) In this Act, ‘Terrorism’ means the use or threat of action where:

- (a) the action falls within the meaning of sub-section (2); and
- (b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or a foreign government or population or an international organization or create a sense of fear or insecurity in society; or
- (c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause or

intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilian, including damaging property by ransacking, looting, arson or by any other means, Government officials, installations, security forces or law enforcing agencies;

Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.”

After going through subsection (1)(b) of section 5 of ATA, the sense becomes clear that if any act which causes death, grievous violence against a person or grievous bodily injury or harm to a person, grievous damage to property, kidnapping, hijacking etc. (contained in other subsections of section 5 of ATA), is designed/done with the object/purpose to coerce and threat or scare the Government or the public or a section of

the public or community or sect or a foreign Government or population or an international organization or creates a sense of fear or insecurity in society; then the provisions of ATA shall be attracted. After going through the relevant provisions of law, we are of the considered view that the cases in which any act is done in furtherance of personal enmity or private vendetta, even if the same is heinous in nature but the object of the same is not as has been mentioned in section 5(1)(b) of ATA then such cases do not come within the ambit of ATA. The Supreme Court of Pakistan in the case titled *Ghulam Hussain and others v. The State & others* (delivered in criminal appeals No.95, 96 of 2019, civil appeal No.10-L of 2017 and criminal appeal No.63 of 2013), referred to by the learned counsel for the appellants has very comprehensively elaborated the scope of ATA and after detailed

discussion has held that the action must be designed to achieve any of the objectives specified in 6 of the Act. In the referred pronouncement, section 6 of Anti Terrorism Act, 1997 has been interpreted which is at par with section 5 of ATA; although, in whole of the judgment guidance with regard to the application of Anti Terrorism Act, has been provided, however, we intend to reproduce here only the concluding paragraph of the same which reads as under:-

“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)



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."

In the light of the findings recorded earlier and the principle of law laid down in the referred pronouncement, we have examined the case of the appellants. The perusal of the record

shows that the allegation levelled against the appellants is that they murdered a person in a brutal manner at a public place in furtherance of previous enmity. The relevant portion of the FIR is reproduced here which reads as under:-

"وجہ عنادیہ ہیکہ ملزمان نے قبل ازیں کزن احمد سلطان کو چھریوں کے وار کر کے مضروب کیا تھا جسکی عیادت کے لئے برادر مہسپتال جا رہا تھا جس باعث ملزمان برادر مہ کیساتھ رنجش رکھتے تھے۔"

In the *challan*, the detail of the previous enmity has been mentioned in the following manners:-

"اس طرح تفتیش عمل آوردہ حالات واقعات پیش آمدہ ملاحظہ جائے وقوعہ و دریافت مستغنیث مقدمہ و گواہان مقدمہ سے پایا گیا کہ ملزمان مقدمہ سے ملزم اسامہ سرور ولد غلام سرور قوم اعوان سکنہ گڑھی دوپٹہ کی وقوعہ مقدمہ سے کچھ روز قبل رائل جم مدینہ مارکیٹ مسمیان احمد سلطان ولد راجہ عظمت حسین (2) راجہ فیصل ولد راجہ ظفر اقبال ساکنان نیلم حال مظفر آباد سے لڑائی ہوئی تھی۔۔۔۔۔"

Nothing has been mentioned in the *challan* that the accused did the act of murder to achieve any object/purpose enumerated in section 5(1)(b), ATA. Thus, in such state of

affairs, it can safely be said that the provisions of ATA are not attracted in the instant case as mere heinousness of the offence does not constitute an offence of terrorism until and unless it is not committed with the design or purpose specified or mentioned in section 5(1), ATA.

Upshot of the above discussion is that the appeal of the appellants is allowed and while accepting the writ petition the case is transferred from the Court of Judge Anti Terrorism to the District Court of Criminal Jurisdiction Muzaffarabad. No order as to costs.

Mirpur,  
20.02.2020

**JUDGE**

**JUDGE**