

P L D 2004 Lahore 726

Before Tanvir Bashir Ansari, J

IBRAR --- Petitioner

Versus

**SAFDAR HUSSAIN MALIK, JUDGE, A.T.A. Court II, RAWALPINDI and 3 others---
Respondents**

Writ Petition No. 1460 of 2003, heard on 10th May, 2004.

Penal Code (XLV of 1860)---

---Ss. 302/324/148/144---Anti-Terrorism Act (XXVII of 1997) Ss. 6, 7 & 23-- Constitution of Pakistan (1973), Art. 199-Constitutional petition---Transferring case from the Court of Judge, Special Court, Anti Terrorism, to Ordinary Court---Case initially was lodged under provisions of Penal Code, but occurrence having taken place in Mosque, D.S.P. (Legal) added S.7 of Anti-Terrorism Act, 1997 and case was transferred to Special Court Anti-Terrorism---Application of accused for transferring case from Court of Special Judge of Anti-Terrorism to Ordinary Court was dismissed by Special Court---Deceased allegedly was done to death for motive that he was allegedly involved in murder of father of accused and later on was acquitted---Alleged motive of occurrence had shown that case was of personalized enmity between complainant party and accused party---Same could not, in circumstances be said with any certainty that accused party had deliberately chosen the venue of Mosque or the time of Jumma prayers for committing said offence---Any act of violence whether it involved single or multiple murders, had to be viewed in the context of purpose and object of law which governed the trial of such offence---Law had certainly created and maintained a distinction between the act of terrorism which in its nature inhered in a deliberate element and purpose of striking terror in the mind of general public for the ulterior and conjoint purpose as enunciated in S.6(1)(b) of Anti-Terrorism Act, 1997 or disjointly as specified in S.6(1)(c) of said Act---Act of terrorism caused by an unknown hand and for apparently unknown reasons and causing wide spread damage to life, limb or property, could justifiably be called a terrorist act subject to provisions of Special Law--Act to fall within the purview of Anti-Terrorism Act, 1997, must be an offence with the primary object of causing panic amongst the general public or a particular section of Society in order to restrain them from going about their normal and routine activity or to, achieve any object enunciated in S. 6(1)(b) of said Act,--Where however, an act stemmed from enmity which was identifiable between tile definite set of complainant arid accused, the panic or terror as a consequence of said act would not by itself be sufficient to bring the said act within the pale of Anti-Terrorism Act, 1997---Determining factor would not be the criminal act itself, but the fact whether it was coupled with mense rea, intention or object to commit an act of terrorism---Was rather premature to assume that accused had purposely selected venue of Mosque and timing of Jumma prayers for taking revenge against deceased---Reasons addressed for attraction of Ss.6 & 7 of Anti-Terrorism Act, 1997 to the case, were based on conjectures surmises and assumptions which were not supported by any material on record---Impugned order of Judge Special Court, Anti-Terrorism, Whereby application of accused was dismissed, was set aside by High Court holding that' case against accused, was liable to be transferred to ordinary Court for trial.

Ch. Bashir Ahmad v. Naveed Iqbal and 7 others PLD 2001 SC 521 and Muhammad Mushtaq v. Muhammad Ashiq and others PLD 2002 SC 841 ref.

Malik Rab Nawaz Noon for Petitioner.

Sardar M. Ishaque Khan for the Complainant.

Raja Saeed Akram, A.A.-G.

Date of hearing: 10th May, 2004.