

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mian Saqib Nisar, HCJ
Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Maqbool Baqar

Criminal Appeals No. 1-K to 3-K of 2018 converted into Suo Motu Case No. 01 of 2018

(Against the order dated 28.11.2017 of the High Court of Sindh, Karachi passed in Special Criminal ATA Nos. 25, 24 and 19 of 2013, Criminal Revision Application No. 40 of 2014 and Confirmation Case No. 1 of 2013)

Muhammad Jibran Nasir and others

(in all appeals)

... Appellants

versus

The State and others

(in all appeals)

... Respondents

For the appellants:

Mr. Faisal Siddiqui, ASC
(in all appeals)

For respondent No. 1/State:

Mr. Zafar Ahmed Khan, Additional
Prosecutor-General, Sindh with Mr.
Mukhtar Ahmed, DSP, Praid, Karachi
(in all appeals)

For respondent No. 2:

Sardar Muhammad Latif Khan
Khosa, Sr. ASC with respondent No.
2 in person
(in Cr. A. No. 1-K of 2018)

For respondent No. 2:

Syed Iqbal Hussain Gillani, ASC
(in Cr. A. No. 2-K of 2018)

For respondents No. 2 & 3:

Mr. Farooq H. Naek, Sr. ASC
Mr. Mehmood Akhtar Qureshi, ASC
with respondents No. 2 & 3 in
person *(in Cr. A. No. 3-K of 2018)*

On Court's notice:

Mr. Ashtar Ausaf Ali, Attorney-
General for Pakistan
(in all appeals)

Dates of hearing:

31.01.2018 & 01.02.2018

JUDGMENT

Asif Saeed Khan Khosa, J.: On 01.02.2018 the captioned appeals had been disposed of by us through a short order which reads as follows:

"These appeals are converted into a Suo Motu Case under Article 184(3) of the Constitution with a direction to the office to assign a number thereto as such.

2. For reasons to be recorded later the case is disposed of with the following orders:

(i) The common judgment passed by a learned Division Bench of the High Court of Sindh, Karachi on 28.11.2017 in Special Criminal ATA No. 19 of 2013, Special Criminal ATA No. 24 of 2013, Special Criminal ATA No. 25 of 2013, Criminal Revision Application No. 40 of 2014 and Confirmation Case No. 1 of 2013 is set aside.

(ii) The order passed by the said Court in the above mentioned matters remanding the relevant criminal case to a court of ordinary jurisdiction for a *de novo* trial as well as all the post-remand proceedings before the trial court are also set aside.

(iii) Special Criminal ATA No. 19 of 2013, Special Criminal ATA No. 24 of 2013, Special Criminal ATA No. 25 of 2013, Criminal Revision Application No. 40 of 2014 and Confirmation Case No. 1 of 2013 shall be deemed to be pending before the High Court of Sindh, Karachi and the same shall be finally decided on their merits at the Court's earliest convenience, preferably within a period of two months by another bench of the High Court to be constituted by the Chief Justice of the Court.

(iv) The accused persons convicted in the relevant criminal case by an Anti-Terrorism Court are ordered to be retaken into custody as their admission to bail during the post-remand proceedings was nullity in the eyes of law. Our order dated 13.1.2018 putting the names of the accused on the ECL shall continue to hold the field till the time the main matters remanded to the High Court are finally disposed of."

The following paragraphs contain the reasons for the short order reproduced above.

2. As we have required the High Court of Sindh, Karachi to decide all the relevant matters afresh on their merits, therefore, it may be inappropriate for us to comment on the factual or legal aspects of the relevant criminal case other than the question of jurisdiction of the Anti-Terrorism Court which had passed the final judgment impugned before the High Court which question had

been decided by the High Court through its judgment impugned before this Court. The long and short of the matter is that the private respondents to these matters before us are accused persons in case FIR No. 591 registered at Police Station Darakhshan, District South Karachi at 01.25 AM on 25.12.2012 for an offence under section 302, PPC read with section 34, PPC. The said criminal case was tried by the learned Judge, Anti-Terrorism Court No. III, Karachi and *vide* judgment dated 07.06.2013 the private respondents were convicted and sentenced by the said court for an offence under section 7(a) of the Anti-Terrorism Act, 1997 read with sections 302, 109 and 34, PPC besides some of the respondents having individually been convicted and sentenced for an offence under section 13(e) of the Arms Ordinance and an offence under section 354, PPC. The private respondents challenged their convictions and sentences before the High Court of Sindh, Karachi through Special Criminal ATA No. 19 of 2013, Special Criminal ATA No. 24 of 2013 and Special Criminal ATA No. 25 of 2013, the complainant filed Criminal Revision Application No. 40 of 2014 seeking enhancement of the sentences passed against the respondents and the trial court sent Confirmation Case No. 1 of 2013 seeking confirmation of the sentences of death passed against two of the respondents. All the said matters were disposed of by a learned Division Bench of the High Court on 28.11.2017 and the relevant criminal case was remanded to a court of ordinary jurisdiction for a *de novo* trial because, according to the High Court, the case was not one of terrorism and, therefore, an Anti-Terrorism Court had no jurisdiction to try the same. That common order passed by the High Court in the above mentioned matters was assailed by some members of the civil society before this Court through three Criminal Petitions for Leave to Appeal wherein leave to appeal had been granted by this Court on 13.01.2018 in the following terms:

"After hearing the learned counsel for the applicants seeking leave of the Court to file the petitions, we on the strength of the constitutional provision of Article 185(3) and on the basis of the judgments cited before us reported as Federation of Pakistan through Secretary, Ministry of Law and another Vs. Gul Hasan

Khan (PLD 1989 SC 633) and the judgments from the foreign jurisdiction (*India*) Arunachalam Vs. R.S.R. Sadhanantham and another [(1979) 2 SCC 297] and Manne Subbarao and another Vs. State of Andhra Pradesh [(1980) 3 SCC 140] and Ramakant Rai Vs. Madan Rao and others (AIR 2004 SC 77) allow these applications and direct the office to number the main petitions.

2. We have extensively heard the arguments of the learned counsel for the parties on merits of the case. Subject to the question of maintainability to be finally decided by the Court, we are inclined to grant leave, *inter alia*, on the following points:-

1. Whether the High Court had ignored the fact that at the inception of the case this Court had ordered the case in hand to be tried by Anti-Terrorism Court as it involved the offence of terrorism? That order of this Court passed in Constitution Petition No.1 of 2013 was never sought by any party to be reviewed and the same was acted upon.

2. During the trial of this case Anti-Terrorism Court had dismissed an application filed by the accused party seeking transfer of the case to a court of ordinary jurisdiction. Cr.R.No.43/2013 filed against such order was dismissed by the High Court on 15.5.2013 and later on Cr.P.No.57-K/2013 filed in that regard before this Court was also dismissed on 21.10.2013. Whether the High Court could nullify those earlier orders on the basis of a judgment of this Court passed in some other case having different set of facts?

3. Whether the observations made by this Court in its order dated 21.10.2013 passed in Cr.P.No.57-K/2013 that "*The question of jurisdiction can now well be agitated before the appellate Court seized of the matter*" amount to setting at naught the earlier order of this Court as well as the later order of the High Court and, thus, in exercise of its appellate jurisdiction the High Court could take a decision contrary to what had already been decided by this Court and by the High Court itself?

4. Whether in the impugned order the High Court was justified in relying upon and following the judgment of this Court passed in the case of Waris Ali and 5 others Vs. The State (2017 SCMR 1572) rendered by a three Member Bench of this Court without appreciating that a five Member Bench of this Court had declared the law differently in the case of Kashif Ali Vs. The Judge, Anti-Terrorism Court No. II, Lahore and others (PLD 2016 SC 951)?

5. It also needs to be examined as to whether the legislature had correctly amended the Pakistan Penal Code (PPC) and the Code of Criminal Procedure (Cr.P.C.) in the light of the judgment passed by the Shariat Appellate Bench of this Court in the case of Federation of Pakistan through Secretary, Ministry of Law and another Vs. Gul Hasan Khan (PLD 1989 SC 633) or not because waiver or compounding of the offence of murder was declared to be permissible in the Injunctions of Islam which are relevant to cases of *Qisas* and *Hudood* and not to cases of *Tazir*. The case in hand was a case of *Tazir* and not of *Qisas*, particularly whether the ratio of the above judgment shall apply to the cases where it is proved that the matter falls

within the purview and scope of the Anti-Terrorism Act, 1997.

6. Whether the evidence does not speak of the act creating fear, panic and terrorism and whether the respondents are protected under the provisions of Articles 4 and 10A of the Constitution qua the fair trial?

7. Whether the case of *locus standi* set out in the petitions is absolutely illusory and without any basis and if in such cases the right to file the petitions before this Court is granted to the public at large, this might open Pandora's box.

3. In the meantime, notice be issued to the respondents. The Government of Pakistan through Ministry of Interior is directed to place the names of the respondents on ECL, even if Secretary is on leave today, the Deputy Attorney General of Pakistan shall convey this direction to the Secretary to convey this order to all the Borders and the Airports of Pakistan that the respondents should not leave the jurisdiction of this country; besides the Registrar of this Court shall also inform telephonically the Secretary, Interior about this order. Learned counsel appearing for the respective respondents undertake and assure that none of the respondents would leave the jurisdiction of this Court. The SSP concerned is directed to produce the respondents before this Court on the next date of hearing. The bailable warrants of arrest of the respondents are issued for surety of Rs.500,000/- each to the satisfaction of Assistant Registrar, Karachi Branch Registry. Any proceedings before the District Judge regarding giving effect to any compromise between the parties are suspended in the meantime. Re-list these matters in the week commencing 29th January, 2018 at the Principal Seat, Islamabad."

3. We have heard the learned counsel for the parties and the learned Attorney-General for Pakistan appearing on Court's notice at some length and have also perused the relevant record of the case with their assistance.

4. At the outset we have been apprised of the fact that soon after taking place of the incident in this case this Court had taken *suo motu* notice of the matter through Constitution Petition No. 01 of 2013 and this Court remained seized of those proceedings under Article 184(3) of the Constitution till after a Challan of the case was submitted by the local police before an Anti-Terrorism Court. That *suo motu* case was finally disposed of by this Court on 22.02.2013. Those *suo motu* proceedings conducted in the matter were not challenged by any party through a review petition and, thus, this Court's opinion that the relevant criminal case involved questions of public importance with reference to the enforcement of some

Fundamental Rights conferred by Chapter I of Part II of the Constitution so as to attract the jurisdiction of this Court under Article 184(3) of the Constitution remained unchallenged. One of the points on which leave to appeal had been granted by this Court on 13.01.2018 in the present round was about *locus standi* of members of the civil society to seek leave to appeal from this Court in such a case and maintainability of such a petition for leave to appeal but in view of the above mentioned peculiarity of this case we have found it inexpedient to decide such an issue in the present case. If at an earlier stage of this very criminal case *suo motu* proceedings under Article 184(3) of the Constitution were in order before this Court then there may not be any impediment in taking *suo motu* notice of any subsequent development in the same case. Apart from that the jurisdiction of this Court under Article 184(3) of the Constitution is an independent original jurisdiction which is not affected by pendency of any matter on the same subject matter before any other court or forum or even by a prior decision of the same issue by any other court or forum below and a reference in this respect may be made to the cases of Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others (PLD 2012 SC 132), Miss Benazir Bhutto v. Federation of Pakistan and others (PLD 1988 SC 416), Mian Muhammad Nawaz Sharif v. President of Pakistan and others (PLD 1993 SC 473), Suo Motu Case No. 10 of 2009 (2010 SCMR 885), Shahid Orakzai v. Pakistan through Secretary Law, Ministry of Law, Islamabad (PLD 2011 SC 365), Khawaja Muhammad Asif v. Federation of Pakistan and others (PLD 2014 SC 206) and Jamshoro Joint Venture Ltd. and others v. Khawaja Muhammad Asif and others (2014 SCMR 1858). For these reasons we have converted these appeals into a Suo Motu Case under Article 184(3) of the Constitution.

5. As the order under consideration passed by the High Court of Sindh, Karachi on 28.11.2017 confined itself to the question of jurisdiction of an Anti-Terrorism Court to try the criminal case in hand, therefore, we have also restricted our discussion only to the

said aspect of the case. We have straightaway noticed in that context that while passing its order dated 28.11.2017 the High Court had practically ignored some important decisions of this Court and of the High Court itself passed in this very case at some earlier stages. In the said order dated 28.11.2017 the High Court had completely omitted from consideration that soon after taking place of the occurrence in this case this Court had taken *suo motu* notice of the matter through Constitution Petition No. 1 of 2013 while exercising its jurisdiction under Article 184(3) of the Constitution. That Constitution Petition was finally disposed of by this Court on 22.02.2013 and the operative part of the order passed on that date reads as under:

"4. In view of the above, we are of the opinion that the challan has been submitted, therefore, the trial has to take place independently, without being influenced in any manner from the present proceedings, in terms of the provisions of Anti Terrorism Act, particularly, Section 19(7), which provides that the cases have to be decided within a period of seven days by holding day-to-day hearing and also in accordance with the guidelines, which have been provided by this Court to monitor the trial proceedings in the case of Sh. Liaqat Hussain and others v. Federation of Pakistan through Ministry of Law, Justice and Parliamentary Affairs and others (PLD 1999 SC 504). The relevant guidelines have been incorporated in the following paras of the short order:-

"(iii) The concerned Special Court should proceed with the case entrusted to it on day to day basis and pronounce judgment within a period of 7 days as already provided in A.T.A. or as may be provided in any other law;

(viii) That the Chief Justice of Pakistan may nominate one or more Judges of the Supreme Court to monitor the implementation of the above guidelines. The Judge or Judges so nominated will also ensure that if any petition for leave/or appeal with the leave is filed, the same is disposed of without any delay in the Supreme Court;

(ix) That besides invoking aid of the Armed Forces in terms of sections 4 and 5 of the A.T.A. the assistance of the Armed Forces can be pressed into service by virtue of Article 245 of the Constitution at all stages including the security of the Presiding Officer, Advocates and witnesses appearing in the cases, minus the process of judicial adjudication as to the guilt and quantum of sentence, till the execution of the sentence."

5. Copy of this order be sent to the learned Monitoring Judge, appointed by the Hon Chief Justice of High Court of Sindh as well as to the learned Monitoring Judge of this Court for information and for ensuring that the trial of this case is concluded, strictly in accordance with law, within the period as stipulated by the above provisions.

6. Raja Muhammad Ibrahim Satti, learned Sr. ASC, has submitted a Civil Misc. Application No. 765/2012 and stated that as the challan has been submitted and the court had made observation that the trial shall be held independently, without being influenced in any manner, from the instant proceedings, therefore, his application be disposed of. Order accordingly.

7. The learned Monitoring Judge of the High Court of Sindh shall submit report to the learned Monitoring Judge, appointed by the Supreme Court of Pakistan, through the Registrar, for his perusal in Chambers."

A bare reading of the said order shows that this Court had not only blessed submission of the Challan of the case before an Anti-Terrorism Court but it had issued detailed guidelines as to how the case was to be tried by the relevant Anti-Terrorism Court and as to how such trial was to be monitored by the Monitoring Judges of this Court and the High Court *vis-à-vis* cases of terrorism. It was clearly observed by this Court that the trial of the case had to be conducted strictly in accordance with the provisions of the Anti-Terrorism Act, 1997 and the guidelines issued by this Court in that regard. It is quite unfortunate that no mention of that order passed by this Court on 22.02.2013 in Constitution Petition No. 1 of 2013 had been made by the High Court in its order dated 28.11.2017.

6. During the pendency of the trial of this case before the Anti-Terrorism Court one of the accused persons had filed an application under section 23 of the Anti-Terrorism Act, 1997 seeking transfer of the case to a court of ordinary jurisdiction as it did not involve the offence of terrorism. The said application was dismissed by the Anti-Terrorism Court on 05.03.2013 through a detailed order a part of which is reproduced below:

"This incident also attracted the attention of public at large even residing at remote area as has been published in newspapers and televised in all channels by media. The Hon'ble Supreme Court had also taken *Suo Moto* notice of the incident. The clear motive for the subject incident has been introduced by the complainant, as well as P.Ws in their statements, i.e. outraged modesty of Miss Maha by house servant of Siraj Talpur. Had the said malefactor did not do so, the instant crime would have not taken place. Therefore, I found no legal justification in the plea of learned advocate for the accused that this case is lacking of motive. Indeed creation of sense of fear in the society due to act of the accused for murder of Shahzaib is coupled with motive indicated above. I have great honour and respect for the

decta laid down and observation made by the Hon'ble Superior Courts in the precedents cited by the learned advocate for the accused, but I am afraid that the same are not applicable in the facts and circumstances of the present case.

The cumulative effect of my above discussion is that the instant crime having nexus with section 6 of Anti-Terrorism Act, 1997. In short subject offence has been committed with the object to terrorize section of public and such act has explicitly created sense of fear and insecurity in society, therefore, this Court is competent/having jurisdiction to try the accused of the subject crime. The application being merit less is dismissed accordingly."

The said order passed by the Anti-Terrorism Court expressly referred to the order dated 22.02.2013 passed by this Court in Constitution Petition No. 1 of 2013 but the order passed by the Anti-Terrorism Court on 05.03.2013 was also completely ignored by the High Court while passing the order dated 28.11.2017.

7. The above mentioned order dated 05.03.2013 passed by the Anti-Terrorism Court was assailed by the relevant accused person before the High Court of Sindh, Karachi through Criminal Revision Application No. 43 of 2013 which was dismissed by a learned Division Bench of the High Court on 24.04.2013 through an elaborate order. The operative part of the said order reads as follows:

"9. Section 6 of the Anti-Terrorism Act, 1997 provides the definition of "terrorism". In order to better appreciate the legal position, section 6(b) of the said Act which defines a "terrorist act" is reproduced as under:

"6. Terrorism.---(1) In this Act, "terrorism" means the use or threat of action where:

- (a)
- (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 create a sense of fear or insecurity in society:"

10. A bare reading of the above quoted provision of law makes it crystal clear that Courts have only to see whether the "terrorist act" was such which would have the tendency to create sense of fear and insecurity in the minds of the people or any section of the society. The Honourable Supreme Court in a case reported as The State through Advocate General, N.W.F.P. Peshawar v. Muhammad Shafiq PLD 2003 SC 224 has held as under:

"We have to see the psychological impact created upon the minds of the people. It is also not necessary that the said act must have taken place within the view of general public so as to bring it within the encompass of the Act.

Even an act having taken place in a barbaric and gruesome manner, if it had created fear and insecurity, would certainly come within the purview of the act."

11. In the present case of accused Shah Rukh Jatoi, offence was committed on the road. By said act of the accused, young boy was shot dead by automatic weapon over a petty matter. It was terrorist act of the accused Shah Rukh, proudly saying to be son of Sikandar Jatoi with sole object to set example for public at large, more particularly the parents of young daughters not to object to the act of the accused or their employee(s) for teasing their young daughter. The further statement of the complainant recorded on 25.12.2012, manifests that Miss Maha was teased by servant of accused Siraj Talpur, she made telephone call to her mother, the later asked deceased Shahzaib to go for rescue of his sister. By such act the accused created a sense of helplessness in minds of people. Impact of the act was such that people of the area protested, came on roads, news flashed in print and electronic media, Honourable Supreme Court of Pakistan took suo-moto notice. Accused Shah Rukh being influential person without joining the investigation succeeded to leave the country. It is clear in this case that the act of accused Shah Rukh Jatoi was designed to create a sense of fear and insecurity and helplessness in the minds of general public disturbing the tempo of the life and tranquility of the society. Provisions of section 6 of the Anti-Terrorism Act, 1997 are fully attracted in this case. The impact of such act terrorized society at large by creating panic and fear in their minds. There is no force in the contention of learned advocate for the Applicant that present case does not fall within the jurisdiction of Anti-Terrorism Court in absence of motive. In the case of *Mirza Shaukat Baig versus Shahid Jamil and others (PLD 2005 SC 530)* it is held that, "there could be no second opinion that where the action of an accused results in striking or creating fear, panic, sensation, helplessness and sense of insecurity among the people in a particular vicinity it amounts to terror and such an action squarely falls within the ambit of section 6 of the Act." Arguments of learned advocate for the applicant that murder has been committed on the basis of previous enmity and offence would not fall within the jurisdiction of Anti-Terrorism Court is also without any merit for the reasons that presence of personal enmity would not exclude the jurisdiction of Anti-Terrorism Court. Neither motive nor intent for commission of offence is relevant for the purpose of conferring jurisdiction on the Anti-Terrorism Court. In the case of *Nooruddin versus Nazeer Ahmed and 4 others (2011 PCr.LJ 1370)* this precise argument was rejected, it was held that enmity would not be the sole criteria to determine the jurisdiction of Anti-Terrorism Court. Aforesaid judgment of this Court was upheld by Honourable Supreme Court in the case *Nazeer Ahmed and others Vs. Nooruddin and another (2012 SCMR 517)*. Relevant portion is reproduced as under:

"We have heard the learned Advocate Supreme Court and have perused the record. The learned High Court has examined the material at length and has rightly concluded that the act of the petitioners created sense of insecurity among the villagers and did destabilize the public at large and therefore, attracts provisions of section 6 of the Anti-Terrorism Act. The learned Advocate Supreme Court in support of his contentions has relied upon the Judgment reported in the case of Mohabat Ali v. The State reported in 2007 SCMR 14 and the case of Basher Ahmed v. Muhammad Siddiq, reported in PLD 2009 SC 11, which are distinguishable on facts. Neither the motive nor intent for

commission of the offence is relevant for the purpose of conferring jurisdiction of the Anti-Terrorism Court. It is the act which is designed to create sense of insecurity and or to destabilize the public at large, which attract the provisions of section 6 of the A.T. Act, which in the case in hand was designed to create sense of insecurity amongst the co-villagers."

We, therefore, hold that act of accused Shah Rukh Jatoi created sense of helplessness and insecurity amongst the people of Defence/Clifton area, where offence was committed and did destabilize the public at large. As such, provisions of section 6 of the Anti-Terrorism Act, 1997 are fully attracted in this case. Therefore, present case would fall within the jurisdiction of Anti-Terrorism Court. Order of learned trial Court dated 05.03.2013 did not suffer from any material irregularity or illegality, the same is maintained. Trial Court is directed to decide the case expeditiously."

In the above mentioned order the learned Division Bench of the High Court had clearly referred to the earlier order passed by this Court on 22.02.2013 in Constitution Petition No. 1 of 2013 but while passing the order dated 28.11.2017 another learned Division Bench of the same High Court had not only completely ignored the order passed by this Court on 22.02.2013 but had also failed even to refer to the order dated 24.04.2013 passed in this very case by another learned Division Bench of the same Court. If such omissions in the order dated 28.11.2017 were inadvertent then the same were unfortunate but if the omissions were deliberate then they were nothing but outrageous.

8. The order dated 24.04.2013 passed by the High Court of Sindh, Karachi dismissing Criminal Revision Application No. 43 of 2013 was challenged by the relevant accused person before this Court through Criminal Petition for Leave to Appeal No. 57-K of 2013 which was dismissed by this Court on 21.10.2013 at a time when the Anti-Terrorism Court had already concluded the trial and had convicted and sentenced the accused persons. The order passed by this Court on 21.10.2013 reads as under:

"This criminal petition is barred by eight days, but not accompanied with any application for condonation of delay. Otherwise too, after the final judgment passed by the trial court, this criminal petition seems to have become infructuous, as the question of jurisdiction can now well be agitated before the appellate Court seized of the matter. Dismissed. Leave refused."

9. In the order passed by the High Court of Sindh, Karachi on 28.11.2017 the learned Division Bench of that Court had twice reproduced the words "as the question of jurisdiction can now well be agitated before the appellate Court seized of the matter" which appeared only as a part of a sentence used by this Court in the above mentioned order dated 21.10.2013. That part of the sentence used by this Court in that order was utilized by the High Court as an authorization from this Court to the High Court to reopen and reconsider the issue pertaining to jurisdiction of the Anti-Terrorism Court to try the relevant criminal case. That impression gathered or conjured up by the High Court was, however, nothing but erroneous and misconceived. The Criminal Petition for Leave to Appeal filed before this Court was barred by time and the same was not accompanied by any miscellaneous application seeking condonation of the delay and, thus, in the absence of condoning the delay there was no lawfully instituted petition before this Court and that is why it was dismissed by this Court. Apart from that the said petition had also been dismissed by this Court as having become infructuous because during its pendency the trial of the case had concluded before the trial court. A part of a sentence in an order passed by this Court in a petition which was dismissed on account of being barred by time and also on account of it having fructified could not possibly be construed by the High Court to have reopened the question of jurisdiction of an Anti-Terrorism Court which question already stood conclusively settled through earlier orders of this Court as well as the High Court itself, particularly when the said earlier orders of this Court and the High Court were not even mentioned in the relevant order of this Court. The High Court ought to have appreciated that the relevant part of the sentence in this Court's order dated 21.10.2013 could not be construed as reviewing the earlier order of this Court passed on 22.02.2013 in Constitution Petition No. 1 of 2013 or setting aside the order passed by the High Court on 24.04.2013 in Criminal Revision Application No. 43 of 2013. Even otherwise, an observation made by this Court in a leave refusing

order regarding a party to a case agitating a matter before the High Court could not be taken or understood by the High Court as a license or authorization from this Court to ignore an earlier order passed by this Court finally clinching an issue and still holding the field. It has, thus, not surprised us that the learned Attorney-General for Pakistan and the learned Additional Prosecutor-General, Sindh have refused to support the order passed by the High Court of Sindh, Karachi on 28.11.2017.

10. The learned counsel for the private respondents have argued that it had been observed by this Court in its order dated 22.02.2013 passed in Constitution Petition No. 1 of 2013 that "the trial has to take place independently, without being influenced in any manner from the present proceedings" which observation left it to the trial court as well as the High Court to decide the issue of jurisdiction of an Anti-Terrorism Court independently and without being influenced by the proceedings undertaken in the matter by this Court. The said argument of the learned counsel for the private respondents is based upon an incomplete reading of the sentence being relied upon. The complete sentence actually reads as "In view of the above, we are of the opinion that the challan has been submitted, therefore, the trial has to take place independently, without being influenced in any manner from the present proceedings, in terms of the provisions of Anti Terrorism Act, particularly, Section 19(7), which provides that the cases have to be decided within a period of seven days by holding day-to-day hearing and also in accordance with the guidelines, which have been provided by this Court to monitor the trial proceedings in the case of Sh. Liaqat Hussain and others v. Federation of Pakistan through Ministry of Law, Justice and Parliamentary Affairs and others (PLD 1999 SC 504)." The said sentence in fact contained a command that the trial of the case was to be conducted in terms of the Anti-Terrorism Act, 1997 and the Anti-Terrorism Court was to proceed with the trial independently and without being influenced by any extraneous factor. The said command of this Court could not be disregarded by the trial court and the High Court also

cannot be allowed to dig holes in the same through half-baked or artificial reasons.

11. The above are the reasons for the short order passed by us on 01.02.2018 through which the captioned criminal appeals have been converted into a *Suo Motu Case*, the offending order passed by the High Court of Sindh, Karachi on 28.11.2017 in the relevant criminal case has been set aside and all the post-remand proceedings and orders of the trial court have been set at naught and reversed. Some of the questions raised in the leave granting order passed by this Court on 13.01.2018 have deliberately been left unattended to as the same do not appear to be relevant to resolution of the controversy at hand and such questions may be attended to by this Court in some other appropriate case.

Chief Justice

Judge

Judge

Islamabad.
February 01, 2018
Approved for reporting.

Arif