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IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Misc..A.No.D- of 2018

179

Pervaiz Ahmed s/o Karamullah Khan
Chandio by caste, r/o Chandio House,
Gul Colony, Taluka Mehar,.....Applicant/complainant

VERSUS

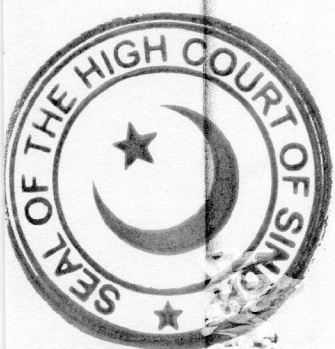
1. The State
2. Sardar Khan
3. Burhan

both s/o Shabir Ahmed Khan, Chandio
by caste, r/o Ghaibi Dero, District Kamber-Shadad Kot
@ Kamber.....Respondents

Offence u/s 302, 504, 109, 114, 148,149 PPC
and 6/7 ATA, 1997,
Crime No.20/2018, P.S A-Section Mehar

APPLICATION U/S 561-A CR.P.C.

It is prayed on behalf of the above named applicant/complainant that this Honourable Court may be pleased to set-aside the order dated 24.02.2018, passed by learned Judge, Anti-Terrorism Court, Naushahro Feroze, thereby accepting the recommendation of investigating officer in the report u/s 173 Cr.P.C, in Crime No.20/2018 of PS A-Section Mehar, u/s 302,504,109,114,148,149 PPC & 6/7 ATA whereby accused Sardar Ahmed Khan was let off u/s 497 Cr.P.C and accused Burhan Chandio was let off u/s 169 Cr.P.C and their names were placed in column-II of the challan; and direct the learned Judge Anti-Terrorism Court Naushahro Feroze to dismiss the said report u/s 173 Cr.P.C to the extent of said two accused viz. Sardar Ahmed Khan and



Burhan Chandio, and order for joining accused Sardar Ahmed and Burhan Chandio as accused in the case, on consideration of the following facts and grounds:-

FACTS

The FIR vide Crime No.20/2018 was lodged by applicant/complainant Pervaiz Ahmed Chandio at PS Mahar on 18.01.2018 at 01.00 a.m.

The contents of FIR are reproduced as under:-

“It is complained that I used to reside at above address. Mukhtiar Ahmed is my brother whereas Karamullah Khan Chandio is my father who was Chairman of UC Baledi. One Sardar Khan Chandio son of Shabir Ahmed Chandio since long used to issue threats to my brother Mukhtiar Ahmed Khan Tumandar in respect of his collusion against him with the help of other Tumandars. He asked him to stop or to face consequences along with Tumandar Counsel and other family members. Such threats were conveyed through different people at different times. Today on 17.01.2018 in the morning, I along with my father Karamullah Khan s/o Khasho Khan aged 65 years, brother Mukhtiar Ahmed Khan aged 45 years and my brother Qail Hussain aged 28 years member district council, cousin Aijaz Ahmed and Manzoor Ahmed s/o Gul Hassan Chandio were standing outside our Otaq situated at road leading from police station towards Fareedabad, when at 09.00 am two vehicles viz. one white Corolla Car No.BFZ-428 and another white Land Cruiser came and stopped, out of which six armed persons identified as 1) Ali Gohar s/o Bakhtiar @ Mukhtiar

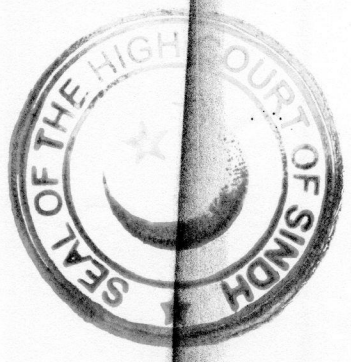


Chandio armed with K.K, r/o Soomer Teevino, 2) Ghulam Murtaza s/o Muhammad Saffar Chandio armed with repeater, r/o Islamabad Muhallah Mehar, 3) Sikander s/o Ali Hassan Chandio armed with repeater r/o Drib Kainchi, 4) Zulfiqar s/o Ghulam Qadir @ Qadu Chandio r/o Sadullah Chandio armed with repeater, 5) Ghulam Qadir @ Qadu s/o Paryal Chandio r/o Sadullah Chandio armed with repeater and one accused Burhan s/o Shabbir Ahmed Chandio was sitting on Land Cruiser and retracted down glass window of the car and instigated other accused that these people inspite of many warnings tried to insurrect against Sardar Khan therefore teach them a lesson and make example for others and kill them, on such instigation of Burhan Khan and at the instance of Sardar Khan the other accused opened the fires and created terror among the people and accused Ghulam Qadir @ Qadu made fire of his repeater upon father Karamullah which hit him on his belly. My father grappled accused Ghulam Qadir during which other accused viz. Ali Gohar with K.K and Ghulam Murtaza with repeater fired in order to rescue Ghulam Qadir and one K.K fire hit father Karamullah on right side of chest and other K.K and repeater fires hit Qadu and both of them fell down thereafter accused Murtaza fired with his repeater with intention to murder upon brother Mukhriar Ahmed which hit him on left side of chest and accused Ali Gohar fired with his K.K which also hit Mukhtiar Ahmed on his face and he fell down while screaming, thereafter accused Sikander fired directly with his repeater with



intention to murder upon my brother Qabil Hussain which hit him on his right side buttock who also fell down while screaming. Thereafter all the accused fired indiscriminately and raised slogans that whoever will revolt against Sardar he will also meet the same fate and went away in their vehicles towards western side. We then saw brother Mukhtiar Ahmed who sustained firearm injuries on his face and chest and father Karamullah sustained firearm injuries on his belly and chest and brother Qabil Hussain sustained firearm injuries on his buttock whom we shifted to Taluka hospital Mehar where father Karamullah and brother Mukhtiar Ahmed succumbed to injuries and brother Qabil Hussain was referred to Larkana by doctors. We after proceedings at hospital buried the dead bodies and in the evening received information regarding death of Qabil Hussain at Larkana whose dead body was shifted to Taluka hospital Mehar and after its postmortem I have come to report that above accused in collusion with each other duly armed spread panic and terror which firing indiscriminately at the instance of Sardar Khan and on the instigation of Burhan Khan have murdered my brother Mukhtiar and Qabil Hussain and father Karamullah and terrorized common men who shut their shops and ran away.”

During investigation of the case, applicant/complainant Pervaiz Ahmed, and PWs Aijaz Ahmed and Manzoor Ahmed fully supported the case. Besides, the medical evidence and circumstantial evidence corroborated the ocular version as given in FIR. The



respondents/accused No.2 and 3 were specifically implicated as accused in the FIR as well as the statements u/s 161 Cr.P.C of the prosecution witnesses.

However, respondents No.2 and 3 are very influential persons, and they malafidely wielded influences over ^{police} for getting undue benefit in the case and for the ulterior purposes of spoiling the case of complainant/prosecution. Consequently the Investigating Officer malafidely submitted the report u/s 173 Cr.P.C, therein letting off respondent/accused No.2 Sardar Ahmed Khan u/s 497 Cr.P.C and respondent/accused No.3 Burhan Chandio u/s 169 Cr.P.C, and their names were placed in column-II of the challan.

That the learned Judge Anti-Terrorism Court passed the impugned order dated 24.2.2018, wherein the recommendation of Investigating Officer was accepted.

Hence, the present application is respectfully submitted before this court, on consideration of the following, amongst other, grounds:-

GROUNDS

1/- That the learned Judge Anti-Terrorism Court Naushahro Feroze, while passing the impugned order, did not properly appreciate the facts of the case, as well as the points of law involved therein.

2/- That the impugned order is not based on any cogent and solid grounds.

3/- That the case is heinous in nature, in which three innocent persons were brutally murdered by respondents/accused.

4/- That the alleged offence was not the out come of previous enmity, but the respondents/accused had clear motive to commit this



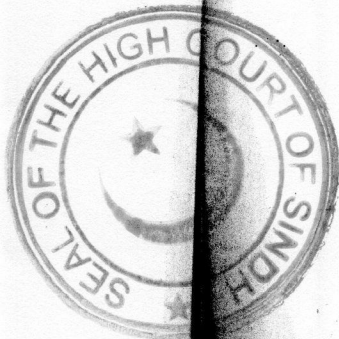
heinous offence, as accused Sardar Khan wanted to maintain his hegemony in the entire area, and being annoyed over the political activities of deceased Mukhtiar Ahmed as Tumandar of the village, wanted to eliminate him and other family members.

5/- That as per FIR the complainant's brother Mukhtiar Ahmed was Tumandar of the area, and his father Karamullah Khan was Chairman of UC Baledai; since considerable period accused Sardar Khan continuously conveyed threats to deceased Mukhtiar Ahmed that he (Mukhtiar Ahmed) was joining other Tumandars of the area with himself, and thereby was spreading revolt against Sardar Khan; he threatened Mukhtiar Ahmed to stop that process, or else he would cause horrible damage to him and his entire family. Such threats were conveyed through different persons at different times to Mukhtiar Ahmed.

6/- That as per FIR accused Burhan was specifically named as accused, and he was clearly assigned the role of instigating the other accused that the complainant party had spread rebellion against Sardar Khan, and despite preventing them they did not stop their activities, as such the accused should give them such cruel treatment and finish them, which should be a terrible lesson for others; on such instigation of accused Burhan and on the abetment of accused Sardar Khan, the remaining accused persons made intense firing, thereby spreading terror among the general public, brutally murdered the complainant's father and two brothers.

7/- That it is strange that in the impugned order neither the names of PWs Aijaz Ahmed and Manzoor Ahmed are mentioned, nor their evidence is discussed.

8/- That furthermore, no cogent reasons are given in the impugned order, for not believing the prosecution evidence brought forth through the eye witnesses and discarding them.



9/- That the important ingredients of section 169 Cr.P.C is that there should be no sufficient evidence to implicate a person as accused. But in present case accused Burhan (who was let off u/s 169 Cr.P.C) is specifically shown as accused in the FIR, and the role of very serious instigation is assigned to him viz instigating the other accused to inflict terrible harm to the complainant, so that they become a lesson for others and they should be eliminated.

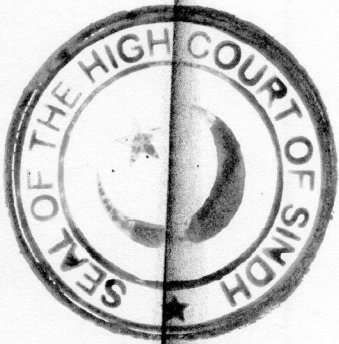
10/- That as per report u/s 173 Cr.P.C respondent/ accused Sardar Khan had cell phone bearing No.0300-3400800; as per Record absconder accused Ghulam Murtaza had made a call to him on 17.01.2018 at 10.49 a.m and again made three SMS to him at 10.52 a.m. According to SMS absconder Ghulam Murtaza sent message to respondent Sardar Khan that he had fight with Mukhtiar and others, and Sardar Khan should restrain police from raiding his house.

11/- That the above fact clearly shows active collusion of respondent Sardar Khan with the other absconding accused persons, in the commission of alleged offence. It may be pertinent to submit that the date and time of incident was 17.01.2018 at 9.00 a.m.

12/- That the above fact further shows that accused Sardar Khan was a very influential person, who could wield undue and unlawful influence upon the police.

13/ That according to FIR, as specifically mentioned at various places, the accused persons deliberately committed the alleged offence in a brutal manner with the clear motive to spread terror, in order to coerce and intimidate the public/community of the entire area, and create the sense of fear among them, so that no person may dare raise his head in front of him.

14/- That it may be significant to note that prior to passing of the impugned order dated 24.02.2018, the applicant/complainant had filed Cr.Tr. A. No.D-19/2018 in the High Court of Sindh at Karachi, for transfer



of the case from the Court of Judge ATC Naushahro Feroze, inter-alia on the ground that complainant has every apprehension that he would not get justice from the said ATC Naushahro Feroze, and that the learned Presiding Officer belonged to Taluka Dokri, and had personal terms with the Advocate for accused. The said transfer application, on the orders of Hon'ble Chief Justice was sent to this Hon'ble Court at Sukkur where it is still pending adjudication.

15/- That thereafter the applicant/complainant had duly filed the statement/intimation in the Court of Judge ATC Naushahro Feroze, stating that he had filed the criminal transfer application on 02.02.2018 before the Hon'ble High Court of Sindh Bench at Sukkur, hence further proceedings may be stopped before ATC Naushahro Feroze till the final adjudication of the criminal transfer application before Hon'ble High Court of Sindh Bench at Sukkur.

16/- That after the filing of above statement/intimation dated 02.2.2018, the learned Judge ATC Naushahro Feroze, as a matter of propriety and principle, ought to have refrained from passing any further order, specially when the personal allegation had been made against the Presiding Officer.

17/- That rather than showing the restraint, as required under the situation, the learned Judge ATC hastily passed the order dated 24.2.2018. Moreover the learned PO ATC Naushahro Feroze also passed the separate order on 24.2.2018, thereby confirming the interim bail of both the respondents/accused viz. Sardar Khan and Burhan.

18/- That in view of the above facts and circumstances, it would be crystal clear that there was sufficient material in the case against respondents No.2 & 3 and that the impugned order was hastily passed, without any reasonable and justifiable ground, and was not a speaking order.



19/- That the impugned order has certainly caused grave miscarriage of justice and prejudice to the genuine interests of applicant/complainant, hence the invocation of jurisdiction of this Hon'ble Court would secure the ends of justice and suppress patent mischief, since the non-interference with the impugned order would be tantamount to perpetuate injustice caused due to passing of impugned order.

20/- That it would be in accordance with the provision of law and principles of justice, that the present application may kindly be allowed.

Mahmood

Dated 02.03.2018 ADVOCATE FOR APPLICANT/COMPLAINANT



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