
JOINT TRIAL OF CNS OFFENCE WITH ATC OFFENCE BY ANTI-TERRORISM COURT





RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: MR. JUSTICE HON'BLE JUSTICE KAMRAN MULAKHAIL

SUBJECT: CRIMINAL LAW, SPECIAL ENACTMENTS.

DATE: 21ST MAY, 2024.

BY: MUHAMMAD ZAKRIA RESEARCH OFFICER

QUERY No. 1: - Whether Special Court under ATA, 1997 may also jointly try a case registered under 9 (C) of CNS Act, 1997 with an offence of terrorism?

QUERY NO. 2: - Whether the Special Court under ATA, 1997 may try/ proceed with or decide non-schedule/ predicate offences, if he opines that no schedule offence is made out?

KEYWORDS:

Joint Trial, joinder of charge, schedule offence, non-schedule offence, predicate offence, try, cognizance, same trial, same transaction.

QUERY No. 1: - Whether Special Court under ATA, 1997 may also jointly try a case registered under 9 (C) of CNS Act, 1997 with an offence of terrorism?

In order to resolve the above query, it pertinent to mention here as a general rule, every offence shall be tried separately within the scope of section 233 of Cr.PC. which is reproduced as under:

*"233. **Separate charged for distinct offences:** For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately except in the cases mentioned in Sections 234, 235, 236 and 239.*

Illustrations

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt."

Similarly, the concept of separate trial of a single offence is also provided under Section 26 of The General Clauses Act, 1897. The Section ibid contemplates that an accused shall be prosecuted and punished only under one enactment irrespective of the fact that such act or omission also constitute another offence under any other enactment(s). The Section 26 is provided as under:

“26. Provisions as to offences punishable under two or more enactments - Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.”

The Section 26 of *ibid* is based upon the maxim, *Nemo debet vexari, si consta curise quoad sit pro una at eadem causa*, means that no man ought to be vexed if it is proved to the Court that it is for one and the same cause. The principle that unless there is anything contrary in the statute under consideration, where an act constitutes an offence under two or more enactments then the offender remains liable to be prosecuted and punished under any one of these enactments, is well-settled in criminal jurisprudence. [Dictionary of English Law (1959) VOL. 1, Page 1218]

It is worth-mentioning that separate trial/charge of each single offence is not an absolute law provided under above quoted provisions. However, there are certain exceptions to the above general rule. For instance, the Section 17 of Anti-Terrorism Act, 1997 empowers the Special Court constituted thereunder to try any offence provided under any law for the time being in force along with any scheduled offence thereunder. For ready reference the Section *ibid* is replicated as *infra*:

“ 17. Powers of ³[Anti-Terrorism Court] with respect to other offences.---When trying any scheduled offence, [an Anti- Terrorism Court] may also try any offence other than the scheduled offence with which the accused may, under the Code, be charged at the same trial.”

(Underlines may be emphasized)

The above words, **“any offence other than schedule offence with which the accused, may, under the Code, be charged at the same trial”** make it crystal clear that the provisions of Cr.PC relating to joinder of charge shall be applicable for the purposes of joint trial of main schedule offences and non-scheduled offences. It would not be wrong too by saying that the words, ***“any offence other than the scheduled offence”*** used in above Section 17 also include any offence which is incidental to or connected with any of schedule offences. Such other offence may be any offence provided under any law for the time being in force.

Similarly, Section 21-M of ATA, 1997, in specific wordings, deals with the concept of joint trial of a schedule and non-schedule offence/predicate offence by the Special Court Constituted thereunder. For convenience reference, Section 21-M *ibid* is quoted as below:

“21-M. [Joint Trial.---(1) While trying any offence under this Act, a Court may also try any other offence with which an accused may, under the Code of Criminal Procedure, 1898, be charged, at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence it is found that the accused person has committed any other offence under this Act or any other law for the time being in force, the Court may convict an accused for such other offence and pass any sentence authorized by this Act or, as the case may be, such other law, for the punishment thereof.]”

(The Underlined requires emphasis)

It is pertinent to mention here that the words, “any other law for the time being in force” also include CNS Act, 1997 and any the general or special enactments. The above quoted provisions, as far as the concept of joint trial is concerned, are supplemental in nature which are aimed at providing for joint trial of offences which are subservient to scheduled offences. Such other offences are not specifically defined in the Anti –Terrorism Act, 1997. However, these have generally been termed and referred to as predicate offences in the case law jurisprudence of the country. The Lahore High Court has elaborated the concept of such subject and predicate offences in the case reported as **2022 Pcr.LJ 203 (Lahore)**. The relevant excerpt thereof is reproduced as under:

*“8. Nature of offences under this Act is different from offences under other laws; most of the offences under this Act have a status of predicate offences which are committed to facilitate the commission of main offence. **A predicate crime or offence is a crime which is a component of a larger crime. Crimes are predicate to a larger crime if they have a similar purpose to the larger crime. For example, using false identification is itself a crime; it may be a predicate offence to larceny or fraud if it is used to withdraw money from a bank account. If the offence of money laundering is committed for terrorism financing, then money laundering becomes a predicate offence; though money laundering is a separate offence which is separately tried under Money Laundering Act, 2010.**”* (Underline requires utmost emphasis)

The High Court of Balochistan in the case of **MUHAMMAD ALAM---Applicant Versus The STATE---Respondent** reported as **2018 PCr.LJ 837 (Balochistan)** has taken the view regarding trial of main offence and predicate offences provided under different Special Enactments. It had held that Special CNS

Court had jurisdiction to try the offence of money laundering with the narcotic offences. The relevant portion whereof is reproduced as below:

“We have heard learned counsel for the parties and have gone through the available record. In the instant case, the trial Court refused the bail to the applicant to the extent of sections 3 and 4 AML Act, 2010 for the reason that he has no jurisdiction to try such cases and to pass an order under the AML Act, 2010 and the applicant was directed to approach the proper forum for grant of bail to the extent of AML Act, 2010. The moot question in this case is whether the CNS Court has got the jurisdiction to try the cases registered under Anti Money Laundering Act, 2010? Before dealing with such controversy, it would be advantageous to reproduce Section 20(1)(a) of the AML Act, 2010, dealing with the jurisdiction of the Court:

***"20. Jurisdiction.-(1)** The Court of Session established under the Code of Criminal Procedure, 1898 (V of 1898) shall, within its territorial jurisdiction, exercise jurisdiction to try and adjudicate the offences punishable under this Act and all matters provided in, related to or arising from this Act.*

Provided,

(a) Where the predicate offence is triable by any court other than the Court of Session, the offence of money laundering and all matters connected therewith or incidental thereto shall be tried by the Court trying the predicate offence;

(b)

6. A plain reading of the above Section abundantly makes it clear that the Court of Session established under the Code of Criminal Procedure, 1898 shall within its territorial jurisdiction, exercise jurisdiction to try and adjudicate the offence(s) punishable under this Act and proviso (a) of the said Act clearly shows that if the predicate offence is triable by any Court other than the Court of Session, the offence of money laundering and all the matters connected therewith or incidental thereto shall be tried by the Court trying the predicate offence(s). Applying this analogy it is crystal clear that the main offence against the accused falls within the ambit of CNS Act, 1997, therefore, being predicate offence is triable by the Special Judge CNS.”

Further reliance may also be made upon the case **ASLAM SURHIANI and another Versus The STATE** reported as **2017 P Cr.LJ 174 [Sindh]**. The most

relevant portion thereof is carefully chosen and quoted as under for ready reference.

“6. In the light of respective arguments of the counsel, while examining the record we find charge, Exhibit-5, against the Appellants at page 23 of the paper book and in the charge the Anti-Terrorism Court Hyderabad has not charged the Appellants for the offence of carrying illegal fire arm weapon with them and attack on police by them on the date of incident of encounter, arrest and rescue of the abductee i.e. 13.08.2009. This fact by itself is enough to believe that the prosecution has failed to discharge its burden of proof beyond reasonable doubts. In view of this legal position, the recovery of abductee in absence of any independent evidence to prove police encounter and alleged recovery of fire-arm was enough to cause serious doubts on the prosecution story that the abductee was rescued by police on 13.08.2009. No justification has been offered by the learned Prosecutor that why the cases under Arms Ordinance and police encounter were not jointly challaned in the Anti-Terrorist Court in terms of section 17 and section 21-M of Anti-Terrorism Act, 1997.

Coming to the facts case in hand, the motive for commission of offence under section 9 of the Control of Narcotics Substance Act, 1997 has been shown as the terror financing of the outlet terrorist organization that is TTP. Hence, the offence of possession of narcotic is the predicate offence of the offence of terror financing as far as the initial taking cognizance of the both the above separate offences is concerned.

QUERY NO. 2: - Whether the Special Court under ATA, 1997 may try/ proceed with or decide non-scheduled/ predicate offences, if he opines that there is no schedule offence in the case?

In order to answer the above query it is stated that the jurisdiction of the Special Court of ATC to try a predicate or non-schedule offence is always subservient to a schedule offence. Such Special Court is seized of jurisdiction of trying a predicate offence independently in absence or non-making out of a schedule offence in an ATC case. The Section 23 of ATA, 1997 enunciates that when, the presiding officer of Special Court is of the opinion there is not a scheduled then it is obligatory upon him to transfer the case to the ordinary competent to try such offence. For the sake of reference Section 23 ibid is given as below:

“23. Power to transfer cases to regular Courts.--Where, after taking cognizance of an offence, an [Anti Terrorism Court] is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no

jurisdiction to try such offence, transfer the case for trial of such offence to any Court having jurisdiction under the Code, and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence."

The above quoted provision has been categorically elaborated by the superior Courts and it has been held that when the Anti-Terrorism Court after taking cognizance of offence is of the opinion the offence is not a scheduled offence then it shall, irrespective of the fact it lacks jurisdiction to try such remaining offence, transfer the case to the court competent to try such offence. It has also been held that stage of trial would be immaterial for exercise of this power. The Section 23 *ibid* is mandatory in nature. This view may be fortified from the *dicta* held in the Reported as **2012 YLR 2448 (Lahore)**. The relevant portion thereof is reproduces as under:

"6. The case against respondents Nos.2 to 6 was registered under section 365, P.P.C. at Police Station Sadler Hasilpur District Bahawalpur. Respondents Nos.2 to 6 allegedly demanded ransom for the release of Manzoor Hussain deceased, brother of the complainant and thereafter due to non-payment of ransom, they done him to death. The police after investigation submitted challan before the learned Judge Anti-Terrorism Court Bahawalpur under sections 302/365-A, P.P.C. read with section 7 of the Anti-Terrorism Act, 1997. Learned Judge Anti-Terrorism Court Bahawalpur, after framing of charge, recorded the evidence produced by the prosecution, examined the accused under section 342, Cr.P.C., heard the final arguments and after appraisal of evidence concluded that the offence under section 365-A, P.P.C. was not made out and transferred the case to the Court of ordinary jurisdiction.

7. We have carefully gone through the case-law produced on the subject. The case titled "Nasir Abdul Qadir and others v. The State (2003 SCMR 472)" was registered under section 302/34, P.P.C. read with the provisions of Suppression of Terrorism Activities Special Court Act, 1995, wherein it was held that the question of jurisdiction can be determined on the basis of F.I.R. and the material which has been produced by the prosecution at the time of the presentation of the challan and it is the. Court which has to decide on the basis of material whether

cognizance is to be taken or not and case was within the competence of the said Court.

8. The Hon'ble Supreme Court of Pakistan in case titled "Mirza Shaukat Baig and others v. Shahid Jamil and others PLD 2005 Supreme Court 530)" observed that it was obligatory upon the Court to watch carefully the nature of accusation and examine the entire record with diligent application of mind to determine as to whether the provisions as contained in the Act would, prima facie, be attracted or otherwise? Where such Courts are of the view, after taking cognizance of the offence, that the alleged offence does not fall, prima facie, under the provisions of the Act, it must transfer the same to regular Court without loss of time..'

9. Section 17 of the Anti-Terrorism Act; 1997 provides for the powers of Anti-Terrorism Court in respect of other offences, which reads as under: "When trying any scheduled offence, (Anti-Terrorism Court) may also try any offence other than the scheduled offence with which the accused may, under the Code, be charged at the same trial" According to the apparent meaning of section 17 of the Anti-Terrorism Act, 1997, the Anti-Terrorism Court has got a power to try non-scheduled offence only when it is trying scheduled offence i.e. scheduled and unscheduled offence can be tried together in one and the same trial. The said power under section 17 of the Anti-Terrorism Act, 1997 shall not be available to the Anti-Terrorism Court when it is not trying any scheduled offence. Once the Anti-Terrorism Court has tried the offence and has formed the opinion that the scheduled offence is not made out, then in the terms of section 23 of the Anti-Terrorism Act 1997, it will have no jurisdiction to pass any judgment and it will have to transfer the case to the ordinary Court. Section 23 ibid reads as under: -- "Where, after taking cognizance of an offence, (Anti-Terrorism Court) is of the opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try' such offence, transfer the case 'for trial of such offence to any Court having jurisdiction under the Code, and the Court to which the case is transferred may proceed with the' trial of the offence as if it had taken cognizance of the offence."

10. In this case, the Anti-Terrorism Court tried the offences and formed the opinion that 'a case of scheduled offence under section 365-A, P.P.C. had not been made out, as such once the Court had formed a different opinion in terms of section 23 of Anti-Terrorism Act, 1997, the said Court had no jurisdiction to pass any final judgment in the trial. Instead the said Court had the only option to transfer the case to the Court of ordinary jurisdiction, as provided under section 23 ibid. It may be observed here that scope of provisions of section 23 of Anti-Terrorism Act, 1997, cannot be limited to a specific point of trial, rather by use of word "cognizance", which includes trial, the legislature was cognizant of the fact in some cases (like the one in hand), the question of jurisdiction may be properly decided after recording of some evidence. As such, no procedural error can be attributed to the impugned order of the learned Judge Anti-Terrorism Court.

11. The impugned order, therefore; is perfectly ' in accordance with law, no illegality, irregularity or any jurisdiction defect is seen therein, hence the same is hereby maintained and as a necessary consequence the writ petition being without any merits, stands dismissed."

Further reliance may also be place on the case of **MUHAMMAD BILAL ALIAS SULLEMAN VERSUS FEDERATION OF PAKISTAN** reported as **2011 Pcr.L J 411**. The relevant paras thereof are replicated as infra:

"9. Once the Anti-Terrorism Court has tried the offence and has formed an opinion that the case of scheduled offence is not made out, in terms of section 23 it will have no jurisdiction to pass any judgment in the case rather the same will have to be transferred to the Court having jurisdiction under the Code who will proceed with the trial of the offence as if it had taken cognizance of the offence.

10. In the present case, though the Anti-Terrorism Court was trying offence under section 6 of the Act but at the final conclusion came to an opinion that the offence under section 6 of the Act has not been proved and thus dropped the charge under the said section. The Court, however, came to conclusion that charge of section 507, P.P.C. has been proved against the petitioner and by invoking the provision of section 17 of the Act proceeded to convict the petitioner under section 507, P.P.C. Thus, when the Anti-Terrorism Court has formed an opinion that the only

offence proved against the petitioner was of section 507, P.P.C., it ought not have proceeded to convict and sentence the petitioner for the reason that section 23 of the Act itself does not give jurisdiction to the Anti Terrorism Court to pass judgment on case of a non-scheduled offence. In the case of *Nasir Masih v. The State and another* (2008 PCr.LJ 713), a Full Bench of Lahore High Court has observed that mere commencement of trial is not a ground for disallowing the prayer of the 'petitioner as under section 23 of the Act, Anti-Terrorism Court in case of non-scheduled offence is duty bound to transfer it to the Court of ordinary jurisdiction.

From the above discussion, it may be said that when the ATC Court is of the opinion that no schedule offence is made out, then its jurisdiction atomically ceases to exist and it becomes *functus officio* to further try the remaining non-schedule offence except its power to transfer the case to the ordinary Court competent to try such non-schedule offence. Any decision, either of acquittal or as the case may be, of the conviction, rendered after such opinion would be null and void. Therefore, the conviction awarded in the present case for the offence under Section 9 (C) of The Control of Narcotics Substance Act has be made without any jurisdiction which is liable to be set aside and the ATC Court/Trial Court be directed to transfer the case to The Special Court CNS having jurisdiction for trial in accordance with law.

ANNEXURES/REFERENCES/BOOKS:

- 1. The Anti-Terrorism Act, 1997.**
- 2. The Code of Criminal Procedure, 1898.**
- 3. The General Clauses Act, 1897 By M. Mahmood. Al-Qaoon Publishers**
- 4. 2022 Pcr.LJ 203 (Lahore).**
- 5. 2017 P Cr.LJ 174 [Sindh].**
- 6. 2012 YLR 2448 (Lahore).**
- 7. 2011 PcrL J 411 (Karachi)**