

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Transfer Application No.91 of 2025

Applicant : Mst. Dr. Ismat Bano d/o Ali
Muhammad - In person

Respondent No.1 : Muhammad Arbab s/o Riaz Baig

Respondent No.2 : Muzammil Shehzadi

Respondent No.3 : The State

Date of Hearing : 01.09.2025

Date of Short Order : 01.09.2025

Date of Reasons : 04.09.2025

O R D E R

Jawad Akbar Sarwana, J.: The applicant/complainant, Mst. Dr. Ismat Bano, is the complainant in Criminal Case No.2926/2024 arising out of FIR No.1386/2023 dated 15.09.2023 registered u/s 24 (cyber-stalking) of the Prevention of Electronics Crime Act ("PECA"), 2016 with the FIA Cyber Crime Reporting Center, Karachi. The complainant is/was aggrieved by the conduct of the trial Court and had filed a transfer application with the Sessions Court, seeking to transfer the criminal complaint from the current trial Court to any other Court. The Sessions Court dismissed the complainant's said transfer application under Section 528 Cr.P.C. vide impugned Order dated 31.07.2025. Hence, this transfer application.

2. I have heard the complainant of the FIR, who is also the complainant of the transfer application dismissed by the Sessions Court. Based on the grounds of the application the primary grievance concerning the trial Court is that the learned Judge has allegedly:

"made personal and irrelevant remarks on multiple times, such as saying: '**Aap ke case mein koi jaan nahi hai**' (there is no substance in your case) and "He will not

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marry you,” which are unprofessional and damaging.”

3. I have also perused the documents available on file, including the documents exchanged before the Sessions Court. I have not found any shortcoming in terms of due process or imbalance in the treatment of the right of hearing between the parties on the part of the trial Court. The diary sheet attached by the complainant does not suggest that the trial Court passed any Order that would call for alarm bells to start ringing. There is no case made out for transfer of the case because the trial Court is not following proper procedure during the conduct of the trial.

4. While the trial Court could have avoided making comments regarding the case on merit, especially disclosing its mind in open Court, no hard and fast rule can be laid down in this regard. For instance, if a lawyer is putting forth a weak argument, the Court should alert the counsel that the argument is weak sooner rather than later. This provides Counsel with the opportunity to engage the Judge and address or re-address his/her submission to the Court. Yet, there is a sense of “**kairos**” to be exercised on the part of the judicial officer when disclosing its’ mind in open Court; otherwise, a seemingly innocuous comment made by a judge may lead to the opposite reaction. “**Kairos**” is an ancient Greek word meaning ‘the right or critical moment.’ In rhetoric, “**Kairos**” is “a passing instant when an opening appears which must be driven through with force if success is to be achieved.” “**Kairos**”, then, means that “one must find the best situation, taking timing into consideration, to act.”

5. In the facts and circumstances of the case, the learned Judge, having conduct of the trial, exercising “**kairos**”, should have had a sense of awareness that the complainant was also present in the room. The criminal complaint involves a matter of “cyber-stalking”, a very personal and sensitive crime alleged by the complainant, which presumably required mental strength on

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her part to bring such a private and personal incident, regardless of the truth or merits or demerits of such allegations, into the public domain. Repeating that the case was weak on more than one occasion could have been avoided, but in the case in hand, the learned trial Judge has denied the same. Further, the casual remarks, such as “he will not marry you,” given in the context of the complaint, should have been avoided, too. If the incidents did occur, while they may not be a matter of “**kairos**”, yet based on a holistic overview of the case, the remarks, if true, appear neither malicious nor biased, to establish a ground for transferring the case from the trial Court to another Court. Clearly, language can be improved; there's always room for course correction, if any, and this bench has confidence that it will be moving forward.

6. Given the above, I passed a short Order on 01.09.2025 on the very first date of hearing of this transfer application, dismissing it for reasons to be recorded. The above are the reasons for the short Order.

J U D G E