

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Revision Application No.S-48 of 2025

(*Ghulam Abbas Vs. The State & 2 Others*)

***Applicant***

Ghulam Abbas Dehraj : through Mr. Muzafar Ali Dahrejo,  
Advocate

***Respondent No.1,*** : through Muhammad Raza Katohar,  
The State Deputy Prosecutor General Sindh.

***Respondent No.2,*** : Nemo.  
District & Sessions Judge  
Naushahero Feroze

***Respondent No.3,*** : through Mr. Abdul Naeem Pirzada,  
Mour Khan Peerzado. Advocate.

Date of hearing. : 07.07.2025

Date of Order. : 11.07.2025

**ORDER**

**Jawad Akber Sarwana, J.:** The Applicant/complainant, Ghulam Abbas Dehraj of FIR No.61/2023 filed at P.S. Mohbat Dero Jatoi, has challenged the Order dated 28.03.2025 ("the Impugned Order"), passed by the learned Sessions Judge, Naushahro Feroze in Criminal ("Crl.") Transfer Application No.19/2025 (*Mour Khan Peerzada v. Ghulam Abbas & Another*). Earlier, Respondent No.3, Mour Khan Peerzado, one of the accused in the aforementioned FIR, had filed the said Crl. Transfer Application and obtained impugned Orders to transfer the Crl. Case No.289 of 2023, from the Court of the 2nd Civil Judge ("CJ") & Judicial Magistrate ("JM"), Kandiaro, to the 1st CJ & JM, Kandiaro. Aggrieved by the impugned Order, Ghulam Abbas Dehraj, has filed this Criminal Revision.

2. Learned Counsel for the Applicant/complainant submits that at the material time, when Respondent No.3/accused filed the Crl. Transfer Application before the Sessions Court, the Crl. Case No.289/2023, was pending before the 2nd CJ & JM at the stage of recording of evidence of the complainant witnesses. Precisely, evidence of six (6) witnesses had been recorded, and only

the second I.O. had to be examined. He contends that the trial Court of the 2nd CJ & JM, having proceeded with the matter for some time, had become well familiar with the case. Apart from recording evidence, the trial Court had also observed the demeanour of the witnesses. Counsel argued that Respondent No.3/accused had filed the above-mentioned Crl. Transfer Application with a malafide intention to delay and protract the trial. Further, specifically, as recorded in the impugned Order dated 28.03.2025, after filing the Crl. Transfer Application before the Sessions Court on 03.03.2025, Respondent No.3/accused also filed a Statement dated 20.03.2025, for withdrawal of the First Ground stated in the Crl. Transfer Application. He argued that this very material fact, which is/was not denied/opposed by Respondent No. 3/accused, was disregarded by the Sessions Court. Counsel sought the setting aside of the impugned Order dated 28.03.2025, and, thus, for the 2nd CJ & JM Magistrate, Kandiaro, to continue with the trial of the Crl. Case No.289/2023. He relied on (i) Executive District Officer (Education), Rawalpindi vs. Mohammad Younas (2007 SCMR 1835), (ii) Aqa Syed Asghar Hussain v. The State (1968 SCMR 381), (iii) an un-reported Order dated 01.07.2016 passed by the Peshawar High Court, D.I. Khan Bench in Crl. Misc. (T.A) No.03-D/2016, and (iv) another un-reported Order dated 10.11.2023 passed by this Court at Principal Seat at Karachi in Crl. Transfer Application No.22 of 2023.

3. On the other hand, learned Counsel for Respondent No.3/accused submitted that the trial Court Judge, namely, the 2nd CJ & JM, Kandiaro, had already recorded his No Objection for the transfer of the case, and when the said trial Court itself had accepted the transfer, therefore, the Sessions Court had no other option but to transfer the case to the 1st CJ & JM, Kandiaro. Hence, the case was rightly transferred from the 2nd to the 1st Civil Judge & Judicial Magistrate, Kandiaro. He prayed for the dismissal of the Criminal Revision.

4. The learned State Counsel submitted that no revision lies against an order passed in respect of the Crl. Transfer Application passed by learned Sessions Judge Naushehro Feroze, and additionally that no prejudice or harm will be caused for transfer of the case from the Court of 2nd to the 1st CJ & JM, Kandiaro.

5. It is common ground between Counsel that no material proceedings have taken place before the 1st CJ & JM, Kandiaro, since the passing of the impugned Order. Both parties seek an expeditious conclusion of the trial, as

the Dehraj and Peerzado families have a history of prior enmity between them, as evidenced by documents available from pages 41 to 53 of this Criminal Revision.

6. Heard Counsel and perused the material available on record.

7. The perusal of the Crl. Transfer Application reveals that the same has urged only two Grounds for the transfer of the case. The First Ground asserts as follows:

“1. That the Complainant lodged false FIR against me in which I am continuously facing the trial, however the learned presiding officer continuously forcing the applicant/accused to compromise with the complainant and the complainant party also loudly speaking at the area that they will get the decision in his favour, as the complainant party have visiting and dining terms with the learned presiding officer, therefore, the applicant/accused has lost his faith and trust upon the court of Learned IInd Civil Judge and J.M. Kandiaro.”

8. It is to be noted that the First Ground in the Crl. Transfer Application, which the Respondent No.3/applicant had subsequently withdrawn, alleged that the Judicial Officer impressed on the parties to enter into a compromise. Such apprehension of Respondent No.3/accused alone does not articulate evidence of any diversion from the requirement of fair trial and due process on the part of the Judicial Officer. While habitual or repeated diversion from the principles of a fair trial and due process on the part of the Court may trigger a potential cause for transferring a case from one court to another, there was no such instance. Persistent suggestions, on the part of a Judicial Officer, to the parties to settle the matter out of Court or to enter into a compromise alone do not favour either party. The Applicant/complainant and the Respondent No.3/accused had a family history of discord, distrust, and alleged violence between them. In the facts and circumstances of the case and the documents available on record, the alleged repeated suggestions from the Judicial Officer to bring to an end the cycle of hostilities between the parties by way of a compromise were no grounds for claiming bias or prejudice and consequently transferring the case. Even otherwise, Respondent No.3/accused, prima facie, has not supported this argument by filing an extract of the Court's diary sheet, evidencing that, allegedly, the trial Court had insisted on several dates upon

Respondent No.3/accused to enter into a compromise. Respondent No.3/accused has produced no such record of the trial Court in this Criminal Revision, and none is mentioned in the Impugned Order passed by the Sessions Court; whereas, the trial Court Judge has denied that he had compelled parties to compromise the matter. Accordingly, in of itself, telling either one or both parties to settle the matter does not constitute a valid ground for bias on the part of the Court.

9. The learned Sessions Judge could not also merely accept the “No Objection” for transfer of the case on the part of the learned trial Court as a fait accompli, unless the Presiding Officer him/herself expressly set out clear reasons why conduct of the case on the part of the trial Court seized of the matter was no longer possible. Indeed, if a Judge is alleged to be biased, one natural defence mechanism, for an officer who has no personal interest in the case and as an arbiter is least bothered about it, is to step out of the way from such allegations, giving it no importance and offering his/her “No Objection” to the request for transfer of the case. However, as discussed hereinabove, no trial will be possible in a Court if such an approach on the part of the officer becomes a norm and/or standard operating procedure. Perhaps a more appropriate response for the trial Court when faced with allegations of bias and/or prejudice, in the first instance, may be to examine the allegation in the context of the facts and circumstances of the case, the statutory and case law in force regarding bias, prejudice, and conflicts, and being mindful of securing the judiciary’s overall reputation and integrity, with an alert and attentive mind and a balanced and equanimous mind, decide whether it should or should not continue with the trial. The Sessions Court, too, should have adopted a similar approach while deciding the CrI. Transfer Application. The Sessions Court, to paraphrase the words of a Lahore High Court Judgment, approvingly cited by the Supreme Court, could have articulated in the impugned Order whether the apprehension being expressed about that Judge is really such as a reasonable man might justifiably be expected to have in the facts and circumstances of the case; and, if so then transfer the case, but, if not, then in such case, the matter ought to be continued to be proceeded in the normal course by the same Judge.<sup>1</sup>

10. Yet after the withdrawal of the First Ground by Respondent No.3/accused, no specific reason for the transfer of the case is found articulated

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<sup>1</sup> *Mushtaq Hussain Shah v. Sanaulah and Three (3) Others*, 1994 P.Cr.LJ 2402

in the Transfer Application. The Sessions Court could not rely on the First Ground in the application after its withdrawal by the Respondent No.3/accused. Even otherwise, the two Grounds asserted by Respondent No.3/accused, including the First Ground, were neither made under oath nor were they accompanied by any contemporaneous evidence. In the circumstances, both Grounds appear to be based on unfounded suppositions.

11. Once the Respondent No.3/accused withdrew the First Ground, the only ground left for the consideration of the Sessions Court to grant the said Application was the Second Ground that merely stated that Respondent No.3/accused apprehended danger of injustice in the trial in the hands of the learned CJ & JM Kandiaro. Therefore, Respondent No.3/accused contended that in the interest of justice, Criminal Case No.289/2023 should be transferred to any other Court. This plea, again, was a mere assertion. A mere apprehension of an adverse judicial order does not constitute a sufficient ground justifying the transfer of a case from the trial Court. Indeed, if such apprehensions and surmises about the Judicial process were to be accepted in a routine manner, then it may well make any and all judicial proceedings a never-ending exercise stuck in a vortex of transfer from one Court to the next. With no end to the fear of losing in litigation - a zero-sum game, i.e., fear on the part of either party in a litigation that it may win or lose - parties cannot be facilitated by Court to act on such fears by accepting applications to transfer their cases from one Court to another based on the mere perception that the Judicial decision from the Court may not be to their liking. While a reasonable apprehension, supported by cogent and logical arguments demonstrating bias or prejudice on the part of the judicial officer, could provide sufficient cause to seek the transfer of a case, such approach too must be balanced in the context of creating a fair, impartial, safe, and transparent environment for judicial officers to administer justice. The vague and casual allegation in the Second Ground of the CrI. Transfer Application without adequate proof, which is conspicuously lacking, cannot be sustained as a sufficient cause for the transfer of the case. It is a trite proposition of law that the mere apprehension of unfair treatment cannot be a ground for the transfer of a case unless any material or circumstance supports it.<sup>2</sup>

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<sup>2</sup> *Muhammad Nawaz v. Ghulam Kadir and 3 Others*, PLD 1973 SC 327; *Daud Iqbal Pervaiz and Another v. The State*, PLD 1990 SC 705; *Muhammad Arshad v. The State*, 1997 SCMR 949; *Sardar Khan and Others v. Muhammad Afzal and Others*, 2013 PSC Criminal 22; *Ms. Benazir Bhutto v. the President of Pakistan and Another*, 1992 SCMR 140; *Muhammad Arshad v. The State*, 1997 SCMR 949; *Anwar and Another v. The Crown*, PLD 1955 Federal Court 185; *Islamic Republic of Pakistan through Secretary, Ministry of Interior and Kashmir Affairs, Islamabad v. Abdul Wali Khan, MNA, Former President of Defunct National Awami Party*, PLD 1976 SC 57;

12. This bench has also weighed the consequences of the potential transfer of the case back to the original court and finds that no prejudice will be caused. Even otherwise, it is common ground between the counsel/parties that both desire expeditious disposal of the criminal case.

13. This bench now turns to the contention raised by the DPG that no revision could be preferred against the impugned Order passed by the Sessions Court. It is well understood now that if a person is aggrieved by the orders of a Sessions Court wherein a case has been transferred from one court to another, then such an aggrieved person may file a Cr. Revision Application before the High Court, as is the case in the instant matter (See footnote #2).

14. Given the above, the Criminal Revision is allowed. The learned Sessions Judge impugned Order to transfer the trial at the stage of recording of evidence from the 2nd to the 1st Civil Judge & Judicial Magistrate, Kandiaro, cannot be sustained. The impugned Order dated 28.03.2025 is set aside and CrI. Case No.289/2023 is returned to the Court of the 2<sup>nd</sup> Civil Judge and Judicial Magistrate, Kandiaro, who will continue/carry on the trial proceedings from the last stage of the case as it was proceeding before the 1<sup>st</sup> Civil Judge and Judicial Magistrate, Kandiaro.

15. Criminal Revision is allowed in the above terms.

*J U D G E*