

ORDER SHEETIN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Transfer Application No.S-61 of 2016

Applicants : Mst. Naheed Begum, through Mr. Sarfraz Khan Jatoi,  
Advocate.

Respondent No.1 : Hussain Bux, through Mr. Yasir Arafat Seelro,  
Advocate.

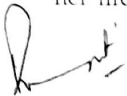
Respondent No.2 : The State, through Mr. Khadim Hussain Khooharo,  
Deputy Prosecutor General.

Date of hearing : 04-11-2016.  
Date of Order : 16-12-2016.

ORDER.

ZAFAR AHMED RAJPUT, I:- Through instant criminal transfer application under Section 526 Cr.P.C, the applicant/accused seeks withdrawal of Sessions Case No.570 of 2014, arisen out of Crime No.117 of 2014, registered at P.S A/Section Shahdadkot under Sections 302, 201, 337-J, 34, PPC, from the Court of Additional Sessions Judge-I, Shahdadkot to any other district.

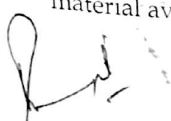
2. Mr. Sarfraz Khan Jatoi, learned Counsel for the applicant has contended that the brother of respondent No.1/complainant, namely, Bashir Ahmed was the husband of applicant, who was murdered by the unknown persons on 09.09.2014 but respondent No.1 malafidely lodged the F.I.R against the applicant with ulterior motive; however, the applicant is facing the alleged charge and attending the trial Court but the respondent No.1 on each and every date of hearing intercepted her in the way and issued threats for dire consequences. He has further contended that the respondent No.1 has already declared <sup>- by -</sup> the applicant as "Kari" and as the said respondent and his witnesses are residing near to court premises in Shahdadkot, she apprehends danger to her life; therefore, she seeks transfer of her case from trial Court to any other



district. He has further contended that the applicant has genuine apprehension regarding her safety while going to attend the trial Court and the Superior Courts in alike circumstances has held that while considering the question of transfer of criminal case, convenience of accused and his witnesses is of paramount consideration in comparison of the convenience of the complainant and his witnesses. In support of his contentions, Mr. Jatoti has referred the case of *Ghulam Hyder vs. Muhammad Sadiq and other* (PLD 1998 Karachi 126); *Mehraj Din and 4 others vs. Shaukat Ali* (1994 P Cr. L.J 722); *Mirza Mubarak Ahmed Nusrat vs. The State and another* (1990 P Cr.L.J 1097) and *Hasan Bukhsh and another vs. Ghulam Mustafa Khan Niazi and another* (1974 P Cr.L.J 116).

3. Conversely, Mr. Yasir Arafat Seelro, learned Counsel for the respondent No.1 has opposed the application vehemently and has maintained that at no occasion the respondent No.1 issued threats to applicant, who has leveled such false allegation to get the case transferred from the trial Court, which is otherwise not supported by strong cogent reasons or convincing evidence. He has further maintained that the murder case cannot be transferred simply on apprehension of danger to life and the applicant cannot claim transfer of the case from trial Court as a matter of routine. He added that the parties cannot be allowed to pick and choose the court of their own choice. Mr. Seelro, in support of his contention, has relied upon the case of *Alamzeb vs. Kamal Nasir and others* (PLD 2004 SC 362); *Ali Muhammad and 7 others vs. The State and another* (2016 Y L R 1139); *Altaf Hussain vs. The State and another* (PLD 2014 Sindh 287); *Mir Muhammad Anwer and 4 others vs. The State and another* (2012 P.Cr.L.J 1314) and *Qazi Muhammad Irshad and 4 others vs. The State* (2001 P.Cr.L.J 1952).

4. I have heard the learned Counsel for the parties and perused the material available on record.



5. It would be relevant to mention here that in compliance of directions of this Court, the learned presiding officer of trial Court submitted his comments on 18.08.2016, wherein it has been stated that "the applicant/accused has often shown apprehension of danger at the hands of complainant party and on this regard directions were issued to complainant side not to take law into their hands and the counsel for the complainant party assured for compliance of said directions of the Court; however, on previous date of hearing viz. 04.08.2016, applicant/accused Mst. Nabeed Khokhar had showed apprehension of danger to her life as according to her some members of the complainant party were following her on the way to her destination after returning from the Court, therefore, under police protection she was sent to her destination."

6. In a normal situation, simply on apprehension of the applicant for danger to his/her life, a murder case cannot be transferred. However, such ground is to be adjudged applying the objective test, taking into account totality of the circumstances of a case and not the subjective visualization. In the instant case the applicant is a lady who has specifically mentioned in her transfer application that she has been declared "Kari". Besides, she made a complaint to trial Judge showing apprehension of danger to her life at the hands of complainant party, therefore, it is apparent that there exists hostility between the parties; hence, apprehension alleged by the applicant is not unfounded, baseless or unjustified. Therefore, in the peculiar circumstances of the case, I allow this criminal transfer application. Resultantly, Sessions Case No.570 of 2014 is withdrawn from the Court of Additional Sessions Judge-I, Shahdadkot and transferred to Sessions Judge, Larkana for its disposal in accordance with law.

  
JUDGE