

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Transfer Application No.S-09 of 2017

DATE ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection
2. For Katcha Peshi.
3. For hearing of MA 562/17

19.01.2018.

Mr. Mumtaz Ahmed Lashari, , Advocate for applicant.
Shahzado Salim Nahyoon, D.P.G for the State
Mr. Ayatullah Khowaja, Advocate, holding brief on behalf of Mr.
Khowaja Azizullah, Advocate for respondents No.1 and 2.

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ORDER

ABDUL MAALIK GADDI, J: Through this criminal transfer application, applicant / complainant seeks transfer of the Sessions Case No.155/2012 (re-State Versus Mir Muhammad and another) for offences punishable under sections 302, 34 PPC bearing Crime No. 21/2012 of P.S Chamber from the file of learned Additional Sessions Judge Tando Allahyar to District Hyderabad for its disposal on merits.

2. The facts leading to the instant Criminal Transfer Application are that the complainant lodged F.I.R. bearing Crime No.21/2012 for offences punishable under section 302, 34 PCP at P.S Chamber, District Tando Allahyar stating therein that the accused Mir Muhammad and another have killed his brother Bashir.

3. It appears that after due investigation the case has been challaned and pending trial before the Additional Sessions Judge, Tando Allahyar and the learned trial court has examined three witnesses including the complainant.

4. The main grievance of the applicant is that the learned Presiding Officer has joined his hands with the accused Mir Muhammad, who is an influential persons of the area so also has developed his relations with the Presiding Officer; that the accused Mir Muhammad Khokhar use to visit the chamber of learned Presiding Officer, therefore, according to him, the applicant has lost faith upon the Presiding Officer for getting justice, as such the applicant has filed this application. Learned Counsel for the applicant during course of the arguments has also reiterated the same facts and grounds which he has urged in the transfer application. However, he has relied upon the case law in support of his contention reported as PLD 2001 Supreme Court 568, PLD 2001 Karachi 14, YLR 2008 (Pesh) 2414, P.Cr.L.J 1999 (Karachi)

227, P.Cr.L.J 1999 (Karachi) 206, 2002 SCMR 709, MLD 1987 (Karachi) 1807, 2016 MLD 376 (Sindh) and 1986 P.Cr.L.J2717 (Lahore).

5. On the other hand, learned D.P.G has opposed this application on the ground that the trial court has examined three material witnesses and the case is about to conclude and if at this stage this transfer application is allowed on flimsy grounds, which has not been supported by any documentary proof, the whole judicial system will be paralyzed and therefore, he was of the view that this transfer application is liable to be dismissed.

6. I have given my anxious thoughts to the submissions raised at the bar by learned Counsel for the applicant as well as learned D.P.G and have gone through the case papers so made available before me.

7. It is an admitted fact that the trial court has already examined three prosecution witnesses and case is about to conclude. It also appears from the record that this transfer application has been filed on 20.01.2017. The comments on this transfer application have also been called from the Presiding Office of the trial court, which are available on record, in which the learned Presiding Officer has denied the allegations. In the grounds of transfer application, applicant has failed to mention the date and time when Presiding Officer called the accused persons. No supporting affidavit has been filed.

8. I have also gone through the facts and circumstances of the case, I find that the allegations made in this application are vague and general in nature and such type of allegations cannot be made the ground of transfer unless supported by tangible evidence which is lacking in this case. This dictum is laid down in the case of Shah Jehan v. Special Judge Anticorruption and others reported as NLR 1993 Criminal 391. While transferring the matter from one court to another, justice should not only be done but should appear to have been done. In the circumstances, justice however, to be done without fear or favour, thus Presiding Officer should equally be protected from frivolous transfer applications in order to achieve transparent even-handed justice so that one of the litigants should not be in a position to overawe the Presiding Officer which might ultimately result in titling scales of justice under fear and malignity. The applicant has chosen to file instant application without any valid, firm and justifiable reason.

09. I have perused the case law relied upon by the learned Counsel for the applicant and find that the same are not applicable to the present case.

10. In view of above discussion, this transfer application is dismissed alongwith listed application. Office is directed to facsimile the copy of this order to the trial court for information.

JUDGE

Ali Haider