

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Criminal Transfer Application No S-15 of 2020

Muhammad Ilyas ----- Applicant

VERSUS

Ld. Additional Sessions Judge
Shahdadpur & others ----- Respondents

Mr. K.B. Lutuf Ali Leghari, Advocate for Applicant
Mr. Muhammad Zaman Zanur, Advocate for Respondent No.5
Mr. Shahid Ahmed Shaikh, D.P.G.

Date of hearing & decision : 24.08.2020

ORDER

ADNAN-UL-KARIM MEMON, J. - Through this application, the applicant has prayed for transfer of Sessions Case No.253/2019 from the court of learned Additional Sessions Judge, Shahdadpur, to any other court of law.

2. In the present matter, the question arises whether this Court can order for transfer of Sessions Case No.253/2019 from one Court to another court under Section 526 Cr.P.C?

3. To answer the aforesaid proposition, it is well settled law that any person who is aggrieved can file a petition before this Court under Section 526, Cr.P.C. if there appears reasonable apprehension of injustice being done due to the conduct of the court subordinate to the High Court. The said grievances must be agitated before this Court but should be supported by legal requirements of law. It would be advantageous to go through provisions of Section 526, Cr.P.C. which read as follows:-

“Section 526. High Court may transfer case or itself try it.

(1) Whenever it is made to appear to the High Court:-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or (b) that some question of law of unusual difficulty is likely to arise, or (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or (d) that an order under this section will tend to the general convenience of the parties or witnesses, or (e) that such an order is expedient for the ends of justice, or is required by any provision of this Code; it may order: (i) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence.

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case or appeal be transferred to and tried before itself; or (iv) that an accused person be sent for trial to itself or to a Court of Session. (2) When the High Court withdraws for trial before itself any case from any Court [...] it shall observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The High Court may act either on the report of the lower Court, or the application of a party interested, or on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate-General, be supported by affidavit or affirmation.

(5) When an accused person makes an application under this section the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if so ordered, pay any amount which the High Court may under this section award by way of compensation to the person opposing the application.

(6) Notice to Public Prosecutor of application under this section. Every accused person making any such application shall give to the Public Prosecutor notice in writing of application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty four hours have elapsed between the giving of such notice and the hearing of the application.

(6A) When any application for the exercise of the power conferred by this section is dismissed, the High Court may if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding [five hundred rupees] as it may consider proper in the circumstances of the case.”

4. At this juncture, I asked learned counsel as to how he is prejudiced if the trial court proceeds with the matter, he replied that respondent No.5 being big landlord of locality as well as influential having support of ruling party is continuously harassing and pressurizing him to withdraw from the aforesaid criminal case or to change the version otherwise applicant and his PWs shall be killed as such it has been impossible for them travel and pursue the case under fear; that due to illegal activities of private respondents the applicant has grave apprehension of being killed at their hands. It is further contended that assurance of fair trial is the first imperative of the dispensation of justice; that the purpose of criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations; that the public confidence in the fairness of a trial would be seriously undermined if no safety of complainant and his witnesses is ensured, the aggrieved party can seek the transfer of a case in another District.

5. As report of learned trial court explicitly show that in the aforesaid criminal case Charge was framed on 05-11-2019 and now the case is pending for trial. Report shows that Complainant has been attending the trial Court on each and every date or hearing but PWs did not turn up and the matter is fixed for evidence.

6. Learned Deputy Prosecutor General, Sindh, assisted by Mr. Muhammad Zaman Zanur learned counsel representing respondent No.5, at the outset, contended that there is no any reasonable ground or plausible cause for transfer of subject case from one Court to another; that nowadays it is a general practice that one of the party would definitely think that he will not get justice and hurriedly believed upon the rumors raised by the defending party as the defending party just to cause harassment or pressurize the contesting party raised such kind of rumors; that at the stage of evidence, it cannot be justified to say that the complainant has received threats if any he has remedy under the law; that this application, being meritless, may be dismissed.

7. I have heard learned Counsel for the Applicant and learned Deputy Prosecutor General assisted by Mr. Muhammad Zaman Zanur learned counsel representing respondent No.5 and has minutely perused the material available on record.

8. On the issue of transfer of case from the Court of Additional Sessions Judge to another Court, learned full Bench of Lahore High court vide order dated 29.04.2019 passed in the case of Naveed Hussain vs. the State, etc. has held as follows:

“In sequel to what has been discussed above, we are of the considered view that the learned District & Sessions Judge has no authority to transfer the case from one Additional Sessions Judge to another except entrustment of fresh cases in administrative capacity. Any subsequent transfer of the case from one court to another exclusively lies with the High Court to entertain and decide if at all compelling reasons justiciable within four corners of law are available, in the safe administration of justice.

14. The instant revision petition is allowed in the above said terms with a direction to the learned Sessions Judge, Lahore, to immediately entrust the bail application of the petitioner to the court where challan of the case already stands submitted.”

9. I have noticed that on the issuance of threats, the applicant has not approached the concerned police with any complaint. No allegations have been leveled against the Presiding Officer of the trial Court. The applicant merely apprehends that he would not get a fair and just trial at Shahdadpur

cannot be considered at this stage for the simple reason that it has to be established through cogent material which factum is lacking in the present case. Besides that, in fact, in the present case recording of evidence was delayed because of non-availability of prosecution witnesses, who are alleged to be under constant fear.

10. Before parting with this order, I expect from learned trial Court for swift disposal of the aforesaid Sessions Case within a reasonable time and in the meanwhile ensure safety of the complainant and his witnesses, at the time of hearing of the case, through all modes of security as provided under the law so that the witnesses depose their testimony with ease, and that too, in a stress-free environment.

11. In the light of above facts and circumstances of the case, this Criminal Transfer application is dismissed along with pending application(s).

JUDGE