

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

Criminal Transfer Application No S- 61 of 2021

Haji Mir Hassan Khan ----- Applicant

VERSUS

Mukhtiar Ahmed @ Gudo  
& others ----- Respondents

Mr. Ashique Hussain D. Solangi, Advocate for Applicant

Date of hearing & decision : 08.11.2021

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** - Through this application, the applicant has prayed for the transfer of Criminal Case No. 46 of 2021 from the Court of learned Civil Judge & Judicial Magistrate, Pithoro, to any other Court of law.

2. In the present matter, the question arises whether this Court can order for transfer of Cr. Case No. 46 of 2021 from one Court to another court under Section 526 Cr. P.C, after framing of the charge?

3. To answer the aforesaid proposition, it is well-settled law that any aggrieved person can file an application 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 offense.

(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 the 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 is proceeding with the matter, he in his abortive attempt replied that the lives of the applicant and his witnesses are in danger; and, further, the learned trial Judge is no more partial; and, taking the side of accused persons involved in the crime. It is further contended that assurance of fair trial is the first imperative of the dispensation of justice; that the purpose of the 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 the complainant and his witnesses is ensured, therefore, the aggrieved party can seek the transfer of a case in another Court/District having jurisdiction to try the case.

5. I have heard the learned counsel for the applicant on the point of maintainability of the instant Transfer Application and perused the material available on record.

6. On the issue of transfer of the case from the Court of Civil Judge & Judicial Magistrate Pithoro 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.

7. 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 except that he is partial. The applicant merely apprehends that he would not get a fair and just trial at the hands of the trial Court at Pithoro could not be considered at this stage prima-facie ground for transfer of the criminal case, 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 the non-availability of prosecution witnesses, who are alleged to be under constant fear.

8. Before parting with this order, I expect from the learned trial Court for swift disposal of the aforesaid criminal case within a reasonable time; and, in the meanwhile ensure the safety of the complainant and his witnesses, at the time of hearing of the case/recording of evidence of the parties, 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.

9. In the light of the above facts and circumstances of the case, I do not find any material irregularity in the impugned order dated 18.9.2021 passed by the learned Sessions Judge Umerkot as well as any merit in this Criminal Transfer Application, which is accordingly dismissed along with the pending application(s).

JUDGE