

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Crl. Misc. Application No.S- 572 of 2020**

Date of hearing	Order with signature of Judge.
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**Hearing of Case**

- 1.For orders on o/objection.
- 2.For hearing of main case.

**11-01-2021**

Mr. Sundar Khan Chachar Advocate for applicants.  
Mr. Shabbir Ali Bozdar Advocate for respondent No.2.  
Mr. Aftab Ahmed Shar, Additional P.G for the State.

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Through instant Crl. Misc. Application, applicants have called in question the validity of order dated 26.09.2019, passed by learned 2<sup>nd</sup> Additional Sessions Judge, Ghotki on Crl. B.A. No.1086 of 2019 re: Mumtaz Ali and another v. The State, whereby while dismissing the bail application filed by the applicants for want of jurisdiction, learned Additional Sessions Judge directed the prosecution to transfer the case through proper channel to the Anti-Corruption Establishment for further proceedings. The operative part of impugned order is reproduced as under:-

"Initially FIR was registered/s 498-F PPC under which male members can be punished who deprives females from the rights of inheritance. The learned Sessions Judge after deleting section 498-F PPC directed the learned Magistrate to try the accused u/s 420, 468 & 471 PPC. The grievance of lady complainant is that her brother in collusion with revenue authorities fraudulently mutated *Fouti Khata* only in favour of male members, thereby, *prima-facie* witnesses of the mutation entry beneficiaries of the transaction and the then revenue staff had committed offence of forgery and cheating which is triable under the scheduled offence, therefore, I am of opinion in agreement with view taken by Mr. Abdullah Malik, learned DDPP for the State and dismiss the application for want of jurisdiction. The prosecution is directed to transfer the case through proper channel to the Anti corruption

establishment for further proceedings. The applicants were on interim bail, their bail bond stands cancelled and surety discharged”.

2. Learned counsel for the applicants submits that the impugned order is illegal and cannot be sustained under the law; that infact the above FIR was disposed of under cancellation C-class, but learned Magistrate while taking cognizance of the matter sent up the case to learned Sessions Judge, but learned Sessions Judge vide order dated 04.08.2018 returned the case to the learned Magistrate by deleting Section 498-F PPC; that learned Magistrate after full-dressed trial, acquitted accused Zulfiqar Ali and Mir Hazar Khan, however, case against applicants Mumtaz and Dilber was kept on dorment as they had gone to Saudi Arbia for performing Hajj; that after performing Hajj, applicants approached learned Sessions Judge, Ghotki by filing pre-arrest bail application, but the same was turned down by learned 2<sup>nd</sup> Additional Sessions Judge vide order, which is impugned in this application; that learned Additional Sessions Judge was not competent to direct the prosecution to transfer the case from ordinary Court to the Anti-Corruption Establishment because fate of the case has already been decided by learned Magistrate. Lastly, he prayed for setting aside of impugned order.

3. On the other hand, learned counsel appearing on behalf of respondent No.2 argued that public record has been forged, whereby female shareholders have been deprived of their legitimate right of inheritance; that fraudulent mutation had been kept in the public record on the basis of false statements of perjurers, therefore, neither local police had jurisdiction to lodge the FIR nor ordinary Court had

jurisdiction to try such cases; that the learned Additional Sessions Judge has rightly refused to entertain bail application, as the offence is scheduled one and is exclusive triable by the Court of Anti-Corruption Establishment. He prayed for dismissal of instant Crl. Misc. Application.

4. Learned Additional P.G for the State while adopting the arguments advanced by learned counsel for the respondent No.2 supported the impugned order.

5. Heard learned counsel for the parties and perused the record. Record reflects that pursuant to orders of this Court, Deputy Director, Anti-Corruption Establishment, Sukkur furnished statement through Circle Officer, ACE, Ghotki, which reflects that after completion of enquiry into Complaint No.03/2019 of ACE, Ghotki, the matter was placed before ACC-II seeking permission for registration of case as per ACE, Rules, 1993 against defaulters, namely, Khalid Hussain Lund, Ex-Mukhtiarkar, Ghotki, Ghulam Shabeer Kalhoru and others, however, since on the same allegations Crl. Direct Complaint filed by Sardar Khan Lakhan against Haji Dilbar Khan and others was pending adjudication before the Court of learned Special Judge, Anti-Corruption, Sukkur, therefore, Deputy Director, ACE, Sukkur returned original complaint papers of said complaint to Circle Officer, ACE, Ghotki with directions to 'Re-Investigate the Matter" and ultimately the Circle Officer after completing enquiry, submitted detailed revise final report of enquiry to the Deputy Director, ACE, Sukkur for obtaining legal opinion from legal branch of Director Office, ACE, Sindh Karachi and consequently on 21.12.2020 statement was filed by Circle Officer,

Ghotki showing that the legal branch office of Director, ACE, Karachi has passed order for placing the matter before ACC-II Sukkur seeking orders to close the matter on the ground that cognizance in the matter has already been taken by learned Special Judge, A.C Provincial, Sukkur and trial has been commenced.

6. At this juncture, learned counsel for respondent No.2 submits that no doubt the above Crl. Direct Complaint was filed before learned Anti-Corruption Court, Sukkur, but the same was subsequently withdrawn and at present the matter is not subjudice before learned Anti-Corruption Court.

7. In such a situation, the Deputy Director, ACE, Sukkur is directed to place both enquiry and re-investigation reports before learned Special Judge, Anti-Corruption (Provincial), Sukkur, one seeking permission from ACC-II, Sukkur for registration of case and another seeking order from ACC-II, Sukkur to close the matter on the ground that matter/Crl. Direct Complaint is subjudice before learned Anti-Corruption Court, Sukkur. The learned Special Judge, Anti-Corruption (Provincial), Sukkur is directed to pass appropriate orders on such report, strictly in accordance with law and after hearing both the parties within a period of two weeks and such compliance report be furnished to this Court through Additional Registrar.

8. Accordingly, instant Crl. Misc. Application stands disposed of in the above manner.

**JUDGE**