

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Crl. Transfer A. No.S- 50 of 2021

Date of hearing	Order with signature of Judge.
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For Hearing of Main Case

24-09-2021

Mr. Mehtab Ali Shar Advocate for Applicant.
Mr. Ghulam Rasool Narejo advocate for Respondents No.2 to 6.
Syed Sardar Ali Shah Rizvi, Deputy P.G for the State.

ORDER

Muhammad Junaid Ghaffar J. Through this Crl. Transfer Application, the Applicant has impugned the order dated 26.07.2021, passed by learned Sessions Judge, Kharipur in Transfer Application No.46 of 2021, whereby Applicant's request for transfer of Crime No.27 of 2021, has been declined.

2. Heard both learned Counsel as well as learned DPG. It appears that two different Crimes bearing Nos. 26 & 27 of 2021 of Police Station Sorah-Khairpur were registered in respect of same incident by the parties and were pending before the Court of Civil Judge & Judicial Magistrate, Nara. Earlier, an application was moved to transfer Crime No.26 of 2021 from the said Court to the Court of 3rd Assistant Sessions Judge Khairpur, as according to the Applicant in that case, a Criminal Direct Complaint in respect of same matter was already pending before him. Said Transfer Application was allowed vide order dated 03.07.2021 and Crime No.26 of 2021 was ordered to be transferred to the Court of 3rd Assistant Sessions Judge, Khairpur. Now present Applicant has moved this Transfer Application for transfer of Crime No.27 of 2021 to the Court of 3rd Assistant Sessions Judge, Kharipur so

that conflicting judgments are avoided. It would be advantageous to refer to the findings of learned Sessions Judge, Khairpur while declining the request of the Applicant and the same reads as under:

“Admittedly, the offences applied in the case which Applicant intends to be transferred are exclusively triable by the Court of Magistrate, therefore, it cannot be transferred to the Court of Assistant Sessions Judge. Moreover, both the parties are resident of same village, therefore, the contention of learned Counsel that the Applicant apprehends danger to his life, if appeared before the trial Court is misconceived. Apparently, the Applicant intends to linger on the matter, therefore, the grounds pressed into the service are not cogent to transfer the case. It is well settled law that the case cannot be transferred on the will and wish of the parties. Reliance is placed upon the case law reported as 2001 P.Cr.L.J 1952. The application being devoid of merits stands dismissed. The learned trial Court is directed to proceed with the matter in accordance with the law. The application stands disposed of accordingly”.

3. Perusal of aforesaid findings reflects that Transfer Application has been refused only on the ground that offences in this Crime are triable by the Court of Magistrate. Learned Deputy P.G for the State has assisted the Court that such finding is erroneous inasmuch as the Court of Assistant Sessions Judge having jurisdiction to try the greater offences can always try the offences triable by the Magistrate. He has relied upon case of Anwar Ali v. The State and others (**2018 PCr.LJ 443**) Moreover, already connected case pending before the Civil Judge & Judicial Magistrate, Nara in Crime No.26 of 2021 has been transferred to the Court of 3rd Assistant Sessions Judge, Khairpur, therefore, this Crl. Transfer Application merits consideration and is hereby **allowed**. It is ordered that Crime No.27 of 2021 of P.S. Sorah-Khairpur be withdrawn and assigned to the Court of 3rd Assistant Sessions Judge, Khairpur, who is already trying Crime No.26 of 2021 of P.S. Sorah-Khairpur.

JUDGE

Ahmad